



Digitized by the Internet Archive
in 2026

MOTOR CARRIER REGULATION
IN THE
UNITED STATES

BY
JOHN J. GEORGE



A DISSERTATION

*Submitted in Partial Fulfillment of the Requirements
for the Degree of Doctor of Philosophy
in the University of Michigan*

1928



MOTOR CARRIER REGULATION IN THE UNITED STATES

BY

JOHN J. GEORGE, Ph.D.

Contributor of Motor Carrier Articles to Bus
Transportation, Missouri Bar Bulletin,
National Municipal Review, Indiana
Law Journal, St. Louis Law
Review, Cincinnati Law
Review and American
Law Review



BAND & WHITE
SPARTANBURG, S. C.

1929

COPYRIGHT, 1929
BY JOHN J. GEORGE

MOTOR CARRIER REGULATION IN THE UNITED STATES

CONTENTS

PART I

	PAGE
CHAPTER 1. INTRODUCTION	1
Recency and magnitude of motor carrier industry.	
CHAPTER 2. ESTABLISHING REGULATION	5
When — Motives — Experience of California — Procedural means used in establishing regulation — Validity of regulation upheld.	
CHAPTER 3. THE REGULATORY AGENCY.....	18
Organization—Jurisdiction—Work.	
CHAPTER 4. SCOPE OF REGULATION.....	36
Exempted Classes—Common Carriers; who are, and who determines—Phases of activity subject to regulation.	

PART II

PROCESS OF REGULATION: INTRASTATE

CHAPTER 5. CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY	52
Origin of this certificate—Reasons for requiring it—Extent of use—Nature of certificate—Term— Who must have it and who need not.	
CHAPTER 6. PROCESS OF SECURING CERTIFICATE.....	70
For bona fide operators on effective date—For operators establishing service after effective date — Deviations from the normal certificate.	
CHAPTER 7. FACTORS IN GRANTING CERTIFICATE.....	81
General considerations—Meaning and interpreta- tion of “public convenience and necessity”—Ab-	

sence of transportation facilities—Adequacy of existing service—Inadequacy of existing service—Probable financial effect of granting certificate—Financial ability of applicant—Popular preference for motor service—Miscellaneous factors—Selection between applicants.

CHAPTER 8. SAFETY, DRIVERS AND LIABILITY PROTECTION 108

Need for safety regulations—Loading the vehicle; forbidden articles—Speed—Stopping at railroad crossings—Periodic inspection of equipment—Multifold task of drivers—Licensing of drivers—Conduct while on duty—Hours of work—Practical effect of requirements for driver—Driver schools—Why liability protection necessary—Municipal precedents—Form of liability protection—Bases and amount of protection—Waiving the requirement—Protection requirement valid—Grounds for recovery of damages.

CHAPTER 9. SERVICE AND RATES..... 126

Commission approval of service schedule and changes therein—Protection for service so long as satisfactory—Obtaining and changing of equipment—Extensions, increase, or decrease of service or unification of routes requires commission approval—Discontinuance and abandonment of service—Primary interest in service—Statutory authority to fix rates—Commission to approve rate schedule and changes therein—Increase in rates allowed—Increase in rates refused—Rate of return—Joint rates—Passes and rebates—What should the rate be?—Specific instances of rates—Lack of comprehensive data makes impossible detecting any definite tendency in rate matters—Commissions have not exercised their power to *fix* rates, and rate policy not yet reached embryonic stage.

	PAGE
CHAPTER 10. SPECIAL TAXATION AND CONTROL OVER FINANCIAL AFFAIRS	144
Bases of taxation—Significance of these bases—Amount of tax on typical vehicle in various states: New Jersey, \$30; Maryland, \$1,571.41—Three groups of states as to use to which tax money is put—Litigation on taxation—Commission approval of security issues—Depreciation reserve—System of accounting.	
CHAPTER 11. TRANSFER OF CERTIFICATE	154
Some grounds on which transfers have been allowed. Grounds for refusing transfer: Deliberate discontinuance of service—Failure to obtain local consent for company as a whole—Not securing approval of commission in advance—Abandoning part of operative rights—Failure to observe equipment requirements—Financial irresponsibility of transferee—Improper making out transfer application. Cash sales value attaches to transfer of certificate in California, Illinois, Indiana, and New York, but not in Ohio. Transfers tend toward consolidation—causes and extent.	
CHAPTER 12. REVOCATION OF CERTIFICATE	163
Three groups of states as to statutory provisions for revocation. Grounds for revocation as declared by commission: Improper filing procedure—False statements in application—Defaulting on liability protection requirement—Failure to establish service within time specified—Failure to furnish dependable service—Violation of safety requirements—Not observing equipment requirements—Carrying passengers contrary to certificate—Violation of liquor laws—Rebating—Suspending and abandoning service without commission approval—Failure to have drivers licensed—Default in payment of taxes. Revocation in Pennsylvania, New York, and North Carolina. Procedure for revocation of certificate.	

	PAGE
CHAPTER 13. MOTOR CARRIER AND RAIL CARRIER.....	173
Rail complaints against motor carriers—Relative advantages of rail and motor passenger service in regard to frequency, dependability, speed, comfort, completion of trip, ease of extending line to new areas, directness of route, and social attractiveness. Considerations in property transportation: Crating and packing, pick-up and store door delivery, elimination of transfer points and consequent rehandling, and prompt filling of emergency orders—Why difficult to determine extent to which competition has developed between motor and rail carriers—Guiding factors in seeking extent of competition: Motor lines paralleling rail lines, number of vehicles operated in line service competitive with rail service, frequency of service of competing rail and motor lines, relative cost of service, volume of business lost by rail to motor service, and distance limits within which motor competition is most marked—Steam lines adopt motor service to only small extent, but electric lines operate one-fourth of all buses—Attitude of regulatory bodies toward the two transportation services: Not to protect rail against motor; favor protecting rail interests; should rail be <i>required</i> to establish motor service adjudged necessary? Present tendency to protect rail line. What will be the ultimate position of motor carriers in the transportation field?	
CHAPTER 14. ENFORCEMENT, PENALTIES AND REVIEW	199
Reports, their frequency and scope—Inspection, agencies and scope—Investigation—Hearings and Orders—Penalties—Appeal and Review.	
PROCESS OF REGULATION: INTERSTATE	
CHAPTER 15. STATE REGULATION OF INTERSTATE MOTOR CARRIERS	214
Magnitude of interstate operation—Early efforts at regulation—State cannot deny certificate for	

	PAGE
interstate operation—State can deny certificate to interstate carrier to engage in intrastate operation—State efforts at requiring insurance of interstate carriers—Routings, service, and safety requirements—State taxation of interstate carriers—State and Federal rights and obligations where Federal aid to highways is involved—Summary of state regulation of interstate carriers.	
CHAPTER 16. FEDERAL REGULATION OF INTERSTATE MOTOR CARRIERS	238
The movement for Federal regulation—Federal regulatory measures proposed—Interstate Commerce Commission seeks information on motor transportation—Outlook for Federal regulation.	
PART III PRINCIPLES AND CONCLUSIONS	
CHAPTER 17. PRINCIPLES OF REGULATION.....	250
Public service—Monopoly or competition?—Protection of existing carriers—Public safety—Publicity in carrier affairs—Restrictions on use of highway—Protection and preservation of the highways—Centralization and integration of administrative control.	
CHAPTER 18. SUMMARY AND CONCLUSIONS	263

TABLE OF CASES USED

UNITED STATES SUPREME COURT:

- Buck v. Kuykendall, 267 U. S. 307 (1925).
- Bush v. Maloy, 267 U. S. 317 (1925).
- Clark v. Poor, 71 L. Ed. (1927).
- Frost v. R. R. Com., 46 Sup. Ct. Reporter 605 (1926).
- Hendrick v. Maryland, 235 U. S. 610 (1915).
- Interstate Buses Corp. v. Holyoke St. Ry., 71 L. Ed. (1927).
- Interstate Buses v. Blodgett, 72 L. Ed. (1928).
- Kane v. New Jersey, 242 U. S. 160 (1916).
- Michigan Pub. Utils. Com. v. Duke, 264 U. S. 570 (1925).
- Morris v. Duby, 71 L. Ed. (1927).
- Packard v. Banton, 264 U. S. 140 (1924).

CASES IN RELATED UTILITY FIELDS

- Gibbons v. Ogden, 9 Wheaton 1.
- Minnesota Rate Cases, 230 U. S. 352.
- Munn v. Illinois, 94 U. S. 113.
- Smith v. Alabama, 124 U. S. 465.
- Southern Ry. v. King, 217 U. S. 524.
- Wabash Case, 118 U. S. 557.

LOWER FEDERAL COURTS:

- American Transit Co. v. Philadelphia, 18 Fed. (2nd), 991 (1927).
- Interstate Buses v. Blodgett, 18 Fed. (2nd) 256 (1927).
- Interstate Buses Corp. v. Holyoke St. Ry., 11 Fed. (2nd) 161 (1926).
- Interstate Motor Transit Co. v. Kuykendall, 284 Fed. 882.
- Liberty Highway Co. v. Mich. Pub. Utils. Com., 294 Fed. 703.
- Red Ball Transit Co. v. Marshall, 8 Fed. 635.
- Schappi Bus Lines Case. and Farina's Bus Lines Case, 11 Fed. (2nd) 940, 943.
- Schoenfeldt v. Seattle, 265 Fed. 726.

STATE COURTS:

- Abbot v. Pub. Utils. Co. (R. I. Sup. Ct.), 136 Atl. 490.
- Arkansas R. R. Com. v. Indep. Bus Line, (Ark. Sup. Ct.) 285 S. W. 388.
- Arkansas R. R. Com. v. Galutza, 2 S. W. (2nd) 1092.
- Auto Freight Case (Wash. Sup. Ct.), 214 Pacific 164.
- Auto Transit Co. v. Ft. Worth (Tex. Ct. of Civ. App.), 182 S. W. 685.

- Barbour v. Walker (Okla. Sup. Ct.), 259 Pacific 552.
Barrows v. Farnum's Stage Lines (Mass. Sup. Jud. Ct.), 150 N. E. 206.
Blackmore v. Public Utils. Com., 160 N. E. 27.
Blue Coach Lines v. Lewis (Ky. Ct. of App.), 294 S. W. 1080 (1927).
Bohl v. Schenectady, 220 N. Y. Supp. 349.
Boston & Maine v. Cate, 150 N. E. 210.
Buckeye Stages v. Pub. Utils. Co. (O. Sup. Ct.), 159 N. E. 561.
Bunch v. Fortney (W. Va. Sup. Ct. of App.), 116 S. E. 753.
Cannon Ball Transportation Co. v. Pub. Utils. Com. (O. Sup. Ct.),
149 N. E. 713.
Carson v. Woodram (W. Va. Sup. Ct. of App.), 120 S. E. 512.
Central O. Transit Co. v. Pub. Utils. Com. (O. Sup. Ct.), 154 N. E. 359.
Chicago, R. I. & Pacific v. Okla., decision in N. A. R. & U. C. Bulletin
73—1926.
C. I. Motor Bus Corp. v. Pub. Utils. Com. (O. Sup. Ct.), 152 N. E. 25.
Circle Tours Case (Ore. Sup. Ct.), 265 Pacific 801.
Cincinnati Traction Co. v. Pub. Utils. Com. (O. Sup. Ct.), 146 N. E.
84 (1924); same title also in 148 N. E. 921 (May, 1925), and 150
N. E. 81 and 308 (Dec., 1925).
Clark v. Denver & I. Ry. (Col. Sup. Ct.), 239 Pacific 20.
Clifton v. State (Ala. Sup. Ct.) See *Bus Age*, July, 1928, 139.
Colonial Motor Coach Co. v. City of Oswego, 215 N. Y. S. 159, and
217 N. Y. S. 907.
Columbus, Delaware & Marion Electric Co. v. Pub. Utils. Com. (O.
Sup. Ct.), 155 N. E. 646.
Columbus Ry., Power & L. Co. v. Pub. Utils. Com. (O. Sup. Ct.), 150
N. E. 237.
Commonwealth v. Potter, 150 N. E. 213.
Coney Island Bus. Corp. v. Pub. Utils. Com. (O. Sup. Ct.), 152 N. E. 25.
Craig v. Pub. Utils. Com. (O. Sup. Ct.), 154 N. E. 795.
Crigger & Stepp v. Allen (Ky. Ct. of App.), 292 S. W. 811.
Davis v. Colorado (Col. Sup. Ct.), 276 Pacific 801.
Dobeson v. Mescall, 199 N. Y. Supp. 215.
Doskovitch v. Pub. Utils. Coms'rs (N. J. Sup. Ct.), 138 Atl. 110.
Duncan v. Jonesboro (Ark. Sup. Ct.), 1 S. W. (2nd) 58.
Eager v. Public Utils. Com. (O. Sup. Ct.), 149 N. E. 865.
East End Traction Co. v. Pub. Utils. Com. (O. Sup. Ct.), 152 N. E. 20.
Egyptian Transportation Co. v. L. & N. Ry. (Ill. Sup. Ct.), 152 N. E.
510.
Estabrook v. Pub. Utils. Com. (O. Sup. Ct.), 147 N. E. 762.

- Ex Parte Cardinal (Calif. Sup. Ct.), 150 Pacific 348.
Ex Parte Dickey (W. Va. Sup. Ct. of App.), 85 S. E. 781.
Ex Parte Sullivan (Tex. Sup. Ct.), 178 S. W. 537.
Ex Parte Tindal, 229 Pacific 125.
Ft. Lee Transportation Co. v. Borough of Edgewater (N. J. Ct. of Errors and App.), 133 Atl. 424.
Franchise Motor Freight Case (Calif. Sup. Ct.), 69 Calif. Decs. 473.
Garrison v. Paramount Bus Corp., 227 N. Y. Supp. 510.
Gilmer v. Pub. Utils. Com. (Utah Sup. Ct.), 247 Pacific 284.
Greeley Transportation Co. v. People (Col. Sup. Ct.), 245 Pacific 720 and 905.
Gruber v. Commonwealth (Va. Sup. Ct. of App.), 125 S. E. 427.
Haddad v. State (Ariz. Sup. Ct.), 201 Pacific 847.
Hadfield v. Lundin, 95 Wash. 657.
Harder v. Pub. Service Com. (Pa. Superior Ct.), P. U. R., 1927D, 560.
Haselton v. Interstate Stages (N. H. Sup. Ct.), 133 Atl. 457.
Hester v. Ry. Com. (Ark. Sup. Ct.), 287 S. W. 763.
Hisse v. Guran (O. Sup. St.), 146 N. E. 808.
Hogan v. Pub. Utils. Com. (O. Sup. Ct.), 148 N. E. 581.
Hunter v. Pope (Pa. Sup. Ct.), 137 Atl. 731.
International Motor Transit Co. v. City of Seattle (Wash. Sup. Ct.), 251 Pacific 120.
Interstate Motor Transit Co. v. Derr, 228 Pacific 624.
Johnson v. Pub. Utils. Com. (O. Sup. Ct.), 157 N. E. 475.
Johnson v. Auto Interurban Co., 245 Pacific 920.
Kinder v. Looney (Ark. Sup. Ct.), 283 S. W. 9.
Knowles v. Kuykendall (Wash. Sup. Ct.), 210 Pacific 666.
Laban v. Range Rapid Transit Co., 207 N. W. 533.
Lake Shore Electric Co. v. Pub. Utils. Com., 115 O. St. 211.
Lamar v. Smith & Straud, 5 S. W. (2nd) 824.
Logan County Bus. Co. v. Ellis (W. Va. Sup. Ct. of App.), 129 S. E. 751.
Lykins v. Pub. Utils. Com., 115 O. St. 245.
Mason v. Intercity Terminal Ry. Co. (Ark. Sup. Ct.), 251 S. W. 10.
McCormick v. Index Stages, 242 Pacific 1090.
Memphis v. State (Tenn. Sup. Ct.), 179 S. W. 631.
Modeste v. Com., 117 Atl. 494.
Morrison v. Town of West New York (N. J. Sup. Ct.), 136 Atl. 175.
Motor Transit Co. v. R. R. Com., 209 Pacific 586.
Motor Transport Co. v. Bd. of Pub. Utils., P. U. R., 1928D, 292.

- Murphy v. Standard Oil Co. (S. D. Sup. Ct.), 207 N. W. 92.
Nelsonville v. Ramey (O. Sup. Ct.), 148 N. E. 694.
Newport Electric Corp. v. Oakley (R. I. Sup. Ct.), 129 Atl. 613.
New York Central R. R. v. Pub. Utils. Com. (O. Sup. Ct.), 154 N. E. 797.
Norfolk Southern Ry. v. Commonwealth (Va. Ct. of App.), 126 S. E. 82.
Northern Ky. Transportation Co. v. Bellevue (Ky. Ct. of App.), 285 S. W. 241.
Northern Pacific Ry. v. Dept. of Pub. Works (Wash. Sup. Ct.), 256 Pacific 333.
Northern Pacific Ry. v. Schoenfeldt, 213 Pacific 26.
Northern Pacific Ry. v. Yakima-Northern Stages (Wash. Sup. Ct.), 283 Pacific 905.
O'Brian v. Moss (N. Y. Sup. Ct.), 221 N. Y. Supp. 621.
Penn. Ry. Co. v. Pub. Utils. Com. (O. Sup. Ct.), 155 N. E. 694 (1927).
People vs. Barbuas, 230 Ill. App. 560.
People v. Hadley (Calif. Dist. Ct. of App.), 226 Pacific 836.
People v. Loveland (Col. Sup. Ct.), 77 Col. 42.
People v. Martin (N. Y. Sup. Ct. of App.), 197 N. Y. S. 28.
People v. Rosenheimer, 209 N. Y. Supp. 215.
People v. Yahme (Calif. Sup. Ct.), 235 Pacific 50.
Peoples Transit Co. v. Louisville Ry. Co. (Ky. Ct. of App.), 295 S. W. 1055.
Perry v. Pickwick Stages, 243 Pacific 787.
Phillips v. Pickwick Stages, 259 Pacific 968.
Pocohontas Transportation Co. v. Craft (W. Va. Sup. Ct. of App.), 130 S. E. 468.
Power v. Crown Stages (Calif. Dist. Ct. of App.), 256 Pacific 457.
Public Service Com. v. Hurtgar (N. Y. Sup. Ct.), 154 N. Y. S. 897.
Public Utils. Com. v. Garviloch (Utah Sup. Ct.), 181 Pacific 272.
Rapid. Ry. Co. v. Mich. Pub. Utils. Com. (Mich. Sup. Ct.), 196 N. W. 518.
Red Star Motor Drivers Assn. v. Mich. Utils. Com. (Mich. Sup. Ct.), 209 N. W. 146.
Red Star Transportation Co. v. Red Dot Coach Lines (Ky. Ct. of App.), 295 S. W. 419.
Reo Bus Lines v. Fuller (Ky. Ct. of App.), 294 S. W. 1080.
Reo Bus Lines v. Dickey (Ky. Ct. of App.), 292 S. W. 791.
Restivo v. West (Md. Ct. of App.), 129 Atl. 884.
Reynolds Taxi Co. v. Hudson and Bartlett v. Hudson (W. Va. Sup. Ct. of App.), 136 N. E. 833.

- Roberto v. Coms'rs of Pub. Utils. (Mass. Sup. Jud. Ct.), 160 N. E. 321.
 Samoset Co., Re (Sup. Jud. Ct. of Me.), 131 Atl. 693.
 Salt Creek Transportation Co. v. Pub. Utils. Com. of Wyo. (Wyo. Sup. Ct.), 263 Pacific 321.
 Schieble v. Hogan (O. Sup. Ct.), 148 N. E. 581.
 Schmidt v. Dept. of Pub. Works (Wash. Sup. Ct.), 213 Pacific 31.
 Sciota Valley Ry. Co. v. Interstate Motor Transit Co. (O. Sup. Ct.), P. U. R., 1927D, 720.
 Sciota Valley Ry. & P. Co. v. Pub. Utils. Com. (O. Sup. Ct.), 154 N. E. 320. Later case with same title and court, 157 N. E. 475.
 Smallwood v. Jeter (Idaho Sup. Ct.), 244 Pacific 149.
 Sohngen v. Pub. Utils. Com. (O. Sup. Ct.), 154 N. E. 734.
 Solt. v. Pub. Utils. Com. (O. Sup. Ct.), 150 N. E. 28.
 Sound Motor Transit Case (Wash. Sup. Ct.), 206 Pacific 93.
 State v. Andrews (N. C. Sup. Ct.), 132 S. E. 563.
 State v. Durazzo (Conn. Sup. Ct. of Errors), 118 Atl. 81.
 State v. Haynes (Ark. Sup. Ct.), 300 S. W. 380.
 State v. Thompson & Neible (O. Sup. Ct.), *Ohio Law Review*, Jan. 31, 1927.
 Strong v. Olson, 241 Pacific 107.
 Superior Motor Bus Co. v. Community Motor Bus. Co. (Ill. Sup. Ct.), 150 N. E. 668.
 Sumner-Tacoma Stage Co. v. Wash. Dept. of Pub. Works, 254 Pacific 245.
 Towers v. Wildason (Md. Ct. of Appeals), 109 Atl. 471.
 United Auto Transportation Co. v. Dept. of Pub. Works (Wash. Sup. Ct.), 223 Pacific 1048.
 Washington Motor Coach Co. v. West (Md. Cir. Ct.), P. U. R., 1927C, 603.
 Weksler v. Collins (Ill. Sup. Ct.), 147 N. E. 797.
 Western Transportation Co. v. People, 261 Pacific 1.
 Westhaven v. Pub. Utils. Com. (O. Sup. Ct.), 147 N. E. 759.
 W. S. T. Co. v. C. & W. T. Co. (Ill. Sup. Ct.), 140 N. E. 56.
 Wood v. Woodlawn (N. Y. Sup. Ct.), 214 N. Y. Supp. 398.
 Yelton & McLaughlin v. Dept. of Pub. Works (Wash. Sup. Ct.), 240 Pacific 679.

COMMISSION CASES:

- Abbott, Re (R. I.), May 12, 1926.
 Adams, Re (R. I.), June 9, 1926.
 Air Taxi Service, P. U. R., 1927C₂, VIII.

- Albery, Re (Ohio), P. U. R., 1927D, 726.
Aldrich, Re, P. U. R., 1923A, 385, 392-4.
Alleghaney Valley St. Ry. Co. v. Greco (Pa.), P. U. R., 1927A, 727.
Anderson Bus Corp., Re, P. U. R., 1926B, 832.
Anderson v. United Parcel Service, P. U. R., 1928A, 265.
Andrews, Re (Wash.), P. U. R., 1925E, 819.
Apache Truck Line, Re (Ariz.), P. U. R., 1919E, 238.
Application of Red Star Line, Re (Md. P. S. Com.), Nov. 29, 1926.
A. R. G. Bus Lines, Re (Calif.), P. U. R., 1919E, 238.
Arizona Gazette, Re, P. U. R., 1922C, 677.
Arizona Pacific Transit Co., P. U. R., 1925C, 501.
Arizona Storage Co., Re, P. U. R., 1926D, 467.
Armentrout, Re (Colorado), P. U. R., 1927C, XII-XIII.
Aselton, Re (R. I.), P. U. R., 1926E, 370.
Ashmead, Re (N. Y.), P. U. R., 1916D, 10.
Austen Brothers v. Bloom (Ill.), P. U. R., 1925D, 363.
Auto Interurban Co., P. U. R., 1923E, 477.
Automobile Traffic, Re (Ariz.), P. U. R., 1915C, 945.
Auto Transportation Company Applications, Re (Wis.), P. U. R., 1928B, 448.
Auto Transit Co., Re, P. U. R., 1925A, 218.
Babcock, Re, P. U. R., 1927C, 603.
Balish, Re, P. U. R., 1928E, 136.
Barber v. Drew (Pa.), P. U. R., 1920C, 194.
Barker Motor Bus Co., Re (Wash.), P. U. R., 1921E, 838.
Bartholomew, Re, P. U. R., 1927B, 50.
Basham, Re, P. U. R., 1928B, 678.
Bee Line, Re (N. Y.), P. U. R., 1926D, 67.
Bell, Re, P. U. R., 1923E, 319.
Bennet Taxicab Co., Re, P. U. R., 1915E, 6.
Bennet, Re (Mont.), P. U. R., 1927C, 595.
Bill's Sightseeing Co., P. U. R., 1928A, 775.
Billings-Sheridan Bus Line (Mont.), P. U. R., 1928B, 816.
Bingamer Motor Express, Re, P. U. R., 1924C, 389.
Bisbee-Tucson Stage Line, Re (Ariz.), P. U. R., 1922B, 764.
Bitzer, Re, P. U. R., 1928B, 675.
Blair v. Coast Truck Line, P. U. R., 1922D, 588.
Blevins, Re (N. Y.), P. U. R., 1919F, 58.
Bly, Re (Pa.), P. U. R., 1925D, 71.
Board of Commissioners v. Clayburg, P. U. R., 1928B, 780.

- Bohn, Re, P. U. R., 1918B, 291.
B. & M. Ry., Re, P. U. R., 1925A, 133.
B. & M. Transportation Co. (N. H.), order 1712, July 17, 1925.
Bohn, Re (Ariz.), P. U. R., 1919B, 292.
Boyce, Re (Nev.), P. U. R., 1923A, 153.
Boyd, Re, P. U. R., 1925 A, 721.
Boyle, Re, P. U. R., 1922A, 859.
Brewster-Daubury Motor Bus, Re, P. U. R. 1925D, 307.
Broadhead, Re (Mont.), P. U. R., 1924E, 222.
Brown, Re (Ariz.), P. U. R., 1926E, 630.
Buffalo Jitney Owners Association, Re (N. Y.), P. U. R., 1923C, 645.
Buffalo Motor Coach Co., P. U. R., 1927E, 848.
Buffalo Motor Express, Re, P. U. R., 1927C, 398-400.
Bush, Re (Pa.), P. U. R., 1925C, 1.
Butte-Anaconda Frt. Express Service, Re (Mont.), P. U. R., 1926C, 496.
California National Bank of Modesto, Re, P. U. R., 1921D, 486.
California Transit Co., Re, P. U. R., 1922D, 284.
California Transit Co. v. Scott, P. U. R., 1928A, 385.
Calistoga & Clear Lake Stage Line, Re, P. U. R., 1918E, 827.
Cannon Ball Coach Line, Re (Ill.), Decision 14589.
Canton-E. Liverpool Coach Co. v. Minerva Transit Co., P. U. R., 1927D, 729.
Capital Stage Lines Co., Re, P. U. R., 1928A, 677.
Carleson, Re, P. U. R., 1927E, 428.
Carlucci, Re (N. Y.), P. U. R., 1919F, 704.
Carpenter, Re, P. U. R., 1925C, 288.
Carver, Re (Col.), P. U. R., 1923B, 242.
Chambersburg G. & W. St. Ry. v. Hardman (Pa.), P. U. R., 1921C, 628.
Cheyney v. Peterson (Utah), P. U. R., 1925E, 312.
Chicago-Detroit Motor Bus Co., Re, P. U. R., 1928C, 103.
Chicago and Joliet Transportation Co., Re, P. U. R., 1928D₄, Special Section, 42.
Chicago Motor Coach Co., Re, P. U. R., 1928D, 657.
Chicago N. Shore & Milwaukee R. Co., Re (Ill.), P. U. R., 1923C, 61.
Choate & Tumulty, Re, P. U. R., 1928A, 98.
Clark, Re, P. U. R., 1927D, 494.
Coastwise Co. v. Pellegrini (Calif.), P. U. R., 1927C, 396.
Colorado Motor Way, Re, P. U. R., 1927B, 569.

- Common Carrier Bus Lines (Neb.), P. U. R., 1925A, 442.
Consolidated Bus Lines Case (N. J.), *Bus Transportation*, May, 1927, 298.
Consolidated Motor Freight Lines, Re, P. U. R., 1926D, 499.
Consolidated Stage Co., Re (Ariz.), P. U. R., 1922A, 592.
Corson, Re, P. U. R., 1928A, 111.
Craig, Re, P. U. R., 1928A, 110.
Crown Stages, Re, P. U. R., 1921A, 747.
Crystal White Coach Line Co., Re, P. U. R., 1926E, 360.
Curnow Livery & Transfer Co., Re (Colorado), Decision 973.
Dean, Re (Md.), P. U. R., 1920C, 974.
DeLuxe Transportation Co., Re, P. U. R., 1920 B, 679.
Demoney, Re (N. Y.), P. U. R., 1920C, 402.
Denver-Colorado Springs-Pueblo Motorway, Re (Colorado), Decision 963.
Denver & I. R. Co. v. Clark, P. U. R., 1925E, 596-9.
Denver & S. Platte Transportation Co., Re (Col.), Decision 976.
D. & S. S. Co. v. Tilden (Col.), P. U. R., 1926D, 574.
Detroit-Cincinnati Coach Line, P. U. R., 1928C, 571.
Dickinson, Re, P. U. R., 1926C, 343.
Dodge Stage Line, Re, P. U. R., 1922D, 785.
Dodge Alley, Re (Wash.), P. U. R., 1926E, 806.
Donovan, Re (Col.), P. U. R., 1921D, 494.
Drayage Service Corporation, Re, P. U. R., 1926C, 774.
Driscoll, Re (Utah), March 18, 1926.
East St. L. & W. R. Co. v. Dingerson (Ill.), P. U. R., 1924C, 127.
East Taunton St. Ry. Co., Re, P. U. R., 1923E, 791.
Eckroth, Re (Pa.), P. U. R., 1926A, 358.
Edmunds, Re, P. U. R., 1924E, 661.
Edwards, Re, III Pa. P. S. Com. Reports, 924.
Elliott, Re (Colorado), P. U. R., 1926A, 380.
Elmwood Park v. Anderson (Ill.), P. U. R., 1923A, 139.
Engelke, Re (N. Y.), P. U. R., 1921C, 71.
Engle, Re (Utah), P. U. R., 1922B, 399.
E. P. Electric Co. v. Kline, P. U. R., 1928B, 678.
Ex Parte Dawson (La.), P. U. R., 1928B, 181.
Ex Parte Vincent (La.), P. U. R., 1928C, 180.
Fagan v. Pittsburgh Transportation Co., P. U. R., 1919E, 990.
Fargo-Moorhead Trucking Co. (N. D.), P. U. R., 1927A, 356, 459.
Farina's Bus Line & Transportation Co., Re, P. U. R., 1922B, 803.

- Flough, Re (Pa.), P. U. R., 1924D, 862.
Ft. Dodge, D. M. & S. Transportation Co., Re (Ia.), P. U. R., 1926C, 19, 27.
Frank Pierce, Re (Wash.), P. U. R., 1926E, 811.
Frost, Re (Utah), P. U. R., 1919E, 662.
Fruirip Bros. Bus Line, Re (Ind.), P. U. R., 1927C, 398.
Fullington v. Milligan (Pa.), P. U. R., 1919F, 215.
Gaiser, Re (N. Y.), P. U. R., 1920B, 246.
Gary Ry. Co., Re (Ind.), Decision 587-M.
Geneseo-Rock Island Bus Co. v. Hilbert (Ill.), P. U. R., 1923E, 311.
Georgia Ry. & Power Co. v. Jitney Bus Co., P. U. R., 1915C, 928.
Giacconelli Bros, Re, P. U. R., 1928A, 425.
Gibson, Re (Calif.), P. U. R., 1926A, 829.
Ginocchio Bros. v. County Commissioners (Nev.), P. U. R., 1924A, 306.
Gold Seal Transit Co., Re, P. U. R., 1927D, 166.
Gold Star Line, Re (Ill.), Decided March 9, 1927.
Golden Eagle-Barker Stages, Re, P. U. R., 1922D, 376.
Gray, Re, P. U. R., 1928B, 659.
Graves, Re, P. U. R., 1920E, 131.
Gregg v. Terre Haute, P. U. R., 1928A, 534.
Greeley Transportation Co., Re (Col.), P. U. R., 1925E, 814.
Greenville Transportation Co., Re (Ind.), Decision 651-M.
Greyhound Lines, Re, P. U. R., 1928C, Special Section, 41.
Guerin, Re, P. U. R., 1928A, 709.
Gust Chopp, Re, P. U. R., 1926D, 541.
Hall, Re, P. U. R., 1928A, 655.
Hanchett, Re, P. U. R., 1922B, 708.
Hansen, Re (Utah), March 13, 1926.
Harlackner v. Adams Transit Co. (Pa.), P. U. R., 1928A, 12.
Hart Motor Coach Co., Re (N. H.), P. U. R., 1927C, 603.
Hart, Re, P. U. R., 1928B, 523.
Hatchell, Re (Ariz.), P. U. R., 1923D, 543.
Heaton, Re (S. D.), Order 878.
Heck, Re (Col.), Decision 986.
Hempstead, Re (Calif.), P. U. R., 1922D, 489.
Highway Transport Co., Re, P. U. R., 1926B, 184.
Highway Transport Co., Re, P. U. R., 1927B, 172.
Himborg, Re, P. U. R., 1922C, 420.
Hiner's Red Ball Line, Inc., P. U. R., 1926A, 133-4.
Hirons, Re, P. U. R., 1928D, Special Section, 75.
Howard, Re (Ind.), P. U. R., 1926D, 365.

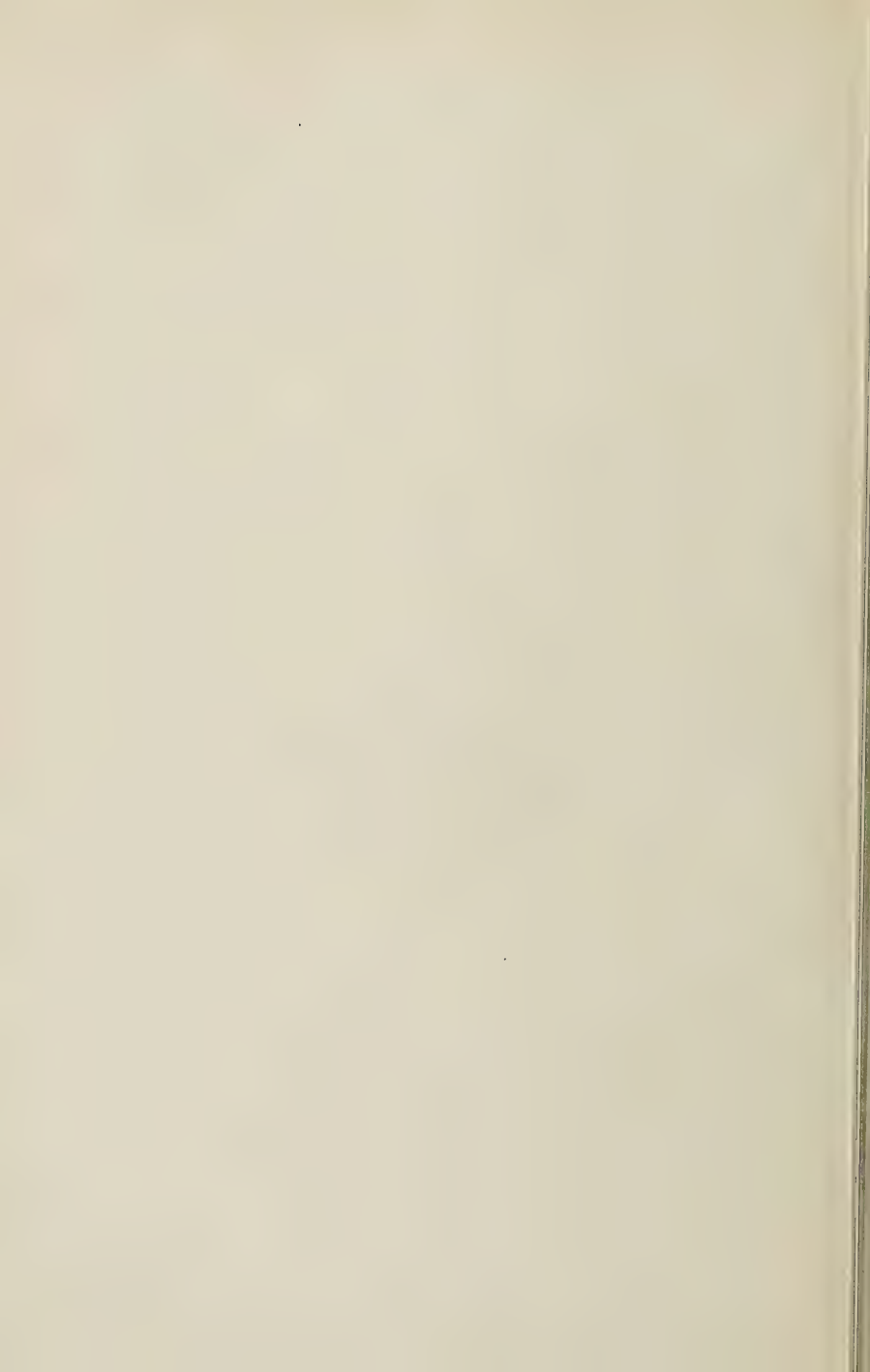
- Huffman, Re, P. U. R., 1922E, 750.
Indianapolis-Cincinnati Bus Co., Re, P. U. R., 1926D, 362.
Indiana Motor Transport Co., 653-M.
Indianapolis St. Ry. Co., Re (Ind.), Dec., 621-M
Inland Empire Stage, Re (Wash.), P. U. R., 1925D, 344.
Insurance Requirement for Motor Transportation Companies, Re, P. U. R., 1928D, 396.
Intercity Coach Co., Re, P. U. R., 1927E, 421.
International Bus Corp., Re (N. Y.), P. U. R., 1927A, 346.
International Ry. Co., Re (N. Y.), P. U. R., 1919F, 63-7.
Jacksonville-Springfield Transportation Co. v. Beeley, P. U. R. 1926E, 741-8.
Jacksonville Ry. Co. v. O'Donnell (Ill.), P. U. R., 1915, 583.
Jahns Bus Co., Re, P. U. R., 1928C, 60.
James, Re (Vt.), P. U. R., 1923E, 858-60.
Jensen, Re (S. D.), Order 994-A.
Jerome-Union Stage Line, Re (Ariz.), P. U. R., 1922E, 850.
Jones, L. A., Re (Calif.), P. U. R., 1921D, 685.
Jones, Re (Pa.), P. U. R., 1924A, 540.
Kibler Trucking Co., Re, P. U. R., 1926E, 360.
Kidd, Re (Col.), P. U. R., 1925C, 414.
Kidd, Re, P. U. R., 1928A, 177.
King, Re (Colorado), P. U. R., 1919F, 377.
Kipps Express & Van Co., Re, P. U. R., 1923E, 260.
Kirchan, Re (Mont.), P. U. R., 1925B, 541.
Knuhlman, Re (Wash.), P. U. R., 1921E, 842.
Kocin, Re, P. U. R., 1924C, 214.
Krakenberger, Re, P. U. R., 1928C, 233.
Krakenberger & Rinne (Wash.), P. U. R., 1926D, 386.
Landis v. Henry (Pa.), P. U. R. 1919C, 554.
Large, Re, P. U. R., 1927E, 356.
LeFors, Re (Wash.), P. U. R., 1926B, 615.
Lehigh Valley Transit Co. v. Erb, P. U. R., 1928A, 607.
Lilley, Re, P. U. R., 1928A, 186.
Lincoln Traction Co., Re, P. U. R., 1927D, 625.
Linden, Re (S. D.), P. U. R., 1926D, 782, 787.
Lingo Bros., Re, P. U. R., 1926A, 271.
Lloyds Transportation Co., Re, P. U. R., 1924D, 482.
Lordship Ry. Co., Re, P. U. R., 1927A, 632.
Louis Sposito, Re, P. U. R., 1922E, 535.

- Lyman, Re (Utah), P. U. R., 1919B, 101.
Madison-Columbus Bus Line, Re, P. U. R., 1926C, 810.
Maine Motor Coaches, Re, P. U. R., 1926B, 561.
Marchant, Re (Utah), P. U. R., 1927C, 398-401.
Martin, Re, P. U. R., 1927A, 88.
Maryland v. Rubin, P. U. R., 1928A, 245.
Maxday, Re, P. U. R., 1928B, 679.
McCartney, Re (Mo.), P. U. R., 1928C, 182.
McMurray, Re (S. D.), P. U. R., 1926D, 785.
Metropolitan Coach Co., Re, P. U. R., 1915D, 740.
Middaugh, Re, P. U. R., 1927E, 207.
Miller Transfer Co., Re, P. U. R., 1926D, 501.
Midwest Transit Co., Re, P. U. R., 1928C, 320.
Mills v. Rocky Mt. Park Transportation Co. (Colorado), P. U. R., 1920B, 557.
Milne, Re, P. U. R., 1927D, 88.
Monzie v. Teter, P. U. R., 1923B, 212.
Moore, Re (Calif.), P. U. R., 1927C, 396.
Morris, Re (Nev.), P. U. R., 1922B, 461.
Mortsfield, Re, P. U. R., 1926D, 108.
Motor Carriers Ass'n v. McCormick Steamship Line (Calif.), P. U. R., 1924C, 474.
Motor Service Express Co. v. Baker, P. U. R., 1928C, 531.
Munk, Re (S. D.), P. U. R., 1926C, 417.
Nebraska Railway Com. v. Salistean, P. U. R., 1925A, 338.
Nelson v. Halley, P. U. R., 1922D, 86.
Newcastle Transit Co., Re (Ind.), P. U. R., 1926B, 185.
Newport Electric Corp., Re, P. U. R., 1925E, 309.
N. Y., N. H. & H. Railway, Re (Mass.), P. U. R., 1926B, 343.
Nevada-California Ry. v. Pinneo, P. U. R., 1925E, 421.
Northport Transportation Co., Re, P. U. R., 1927C, 605.
Northampton Transit Co. v. Sault (Pa.), P. U. R., 1926E, 799.
Oakland-San Jose Transportation Co., Re (Calif.), P. U. R., 1920A, 925.
Olds Trails Express Co. v. Brazil, P. U. R., 1928A, 440.
O. L. R. & L. Co. v. Henry (Neb.), P. U. R., 1922B, 74.
Overall v. Asken, Re, P. U. R., 1927C, 385.
Overland Motor Express Co., Re (Col.), P. U. R., 1920B, 555.
Packard, Re, P. U. R., 1928C, 189.
Pacific Electric Ry. Co., Re, P. U. R., 1928E, 136.
Pacific States Express (Calif.), P. U. R., 1922D, 298.

- Packard DeLuxe Lines, Re (Ill.), July 10, 1923.
Palo Verde & Imperial Valley Transportation Co., Re (Calif.), P. U. R., 1920C, 619.
Paradox Land & Transport Co., Re (Col.), 1923E, 759.
Paradox Land & Transport Co., Re, P. U. R., 1924E, 579.
Payne, Re, P. U. R., 1924A, 545.
Peninsular Rapid Transit Co., Re, P. U. R., 1922D, 76.
Penny, Re (Mont.), P. U. R., 1926E, 352.
Peoples Motor Coach Co., Re (Ind.), P. U. R., 1926A, 385.
Philadelphia Suburban Transit Co., Re, P. U. R., 1927A, 93.
Phoenix Motor Coaches (Ariz.), P. U. R., 1925E, 344.
Phoenix-Superior Truck Line, Re, P. U. R., 1922D, 608.
Pickard, Re, P. U. R., 1927C, 402.
Pickwick Stages, Re (Calif.), P. U. R., 1926D, 609; another case by same title, P. U. R., 1928B, 1.
Plaza Stages (Calif.), P. U. R., 1921E, 243.
Pless & Davis, Re, P. U. R., 1928B, 783.
Pratt, Re (Col.), P. U. R., 1927C, 509.
Preston, Re (Col.), 1922C, 844.
Price Motor Trucking Co., Re (Ohio), 3984 Pub. Utils. Com. 1926.
Price v. Pickwick Stages (Calif.), P. U. R., 1920E, 581.
Public Service Co. v. Mayor (N. J.), P. U. R., 1926E, 352.
Public Service Co. v. Johnson Motor Freight Line, P. U. R., 1928B, 175.
Public Utilities Engaged in Transportation, Re (Indiana), Dec., 511-M.
Purple Swan Safety Coach Lines, Re, P. U. R., 1928A, 201.
Ralston v. Salistean, P. U. R., 1925A, 334.
Reeder, Re (Ind.), P. U. R., 1926D, 55.
Rex, Re (Calif.), P. U. R., 1920B, 675.
Rhoads, Re (Col.), P. U. R., 1925C, 303.
Rhoney, Re (N. Y.), P. U. R., 1923D, 623.
Richards Trucking & Warehouse Co., Re, P. U. R., 1926E, 342.
Ritter, Re (Ill.), P. U. R., 1923B, 630.
Rudy, Re (Iowa), P. U. R., 1925D, 743.
Rudsell, Re (Utah), P. U. R., 1927C, 400.
St. Johnsbury & L. C. Ry. v. Central Vermont Ry., P. U. R., 1926E, 701.
Salt Creek Transportation Co. v. Apgar (Wyo.), P. U. R., 1926A, 180.
Salters, Re, P. U. R., 1926A, 114.
Salt Lake v. U. R. Co., P. U. R., 1925A, 154.
San Rafael Freight & Transfer Co. v. Lawson (Calif.), P. U. R., 1927C, 93.

- Sarretto, Re, P. U. R., 1924A, 458.
Saulisbury Transportation Co., Re (O.), P. U. R., 1927C, 611.
Schappi Bus Lines, Re, (Ind.), P. U. R., 1925E, 401.
Scofield Bus Lines, Re (Mo.), P. U. R., 1926D, 661.
Scott, Re (Pa.), P. U. R., 1924B, 208.
Scranton R. Co. v. Walsh (Pa.), P. U. R., 1916D, 18.
Seeman, Re, P. U. R., 1927E, 534.
Seymour, Re, P. U. R., 1927C, 402.
Shepard (Ind.), Decision 590-M.
Shore Line Motor Coach Co., Re, P. U. R., 1928C, 175.
Simms v. Columbia Telephone Co., P. U. R., 1915C, 367.
Simms-Great Falls Freight Service (Mont.), P. U. R., 1926C, 818.
Smallwood, Re (Ind.), P. U. R., 1927C, 395.
Smith v. Shaw (Pa.), P. U. R., 1925A, 529.
Smith v. Nunelly (W. Va.), P. U. R., 1915E, 177-8.
Southern Pa. Traction Co. v. Hartel (Pa.), P. U. R., 1917A, 630.
Spencer-Martinsville Motor Line (Ind.), Dec., 589-M.
Spoonier, Re, P. U. R., 1927C, 603.
Stages, Re (Calif.), P. U. R., 1925A, 704.
Standard Oil Co., Re, P. U. R., 1926-A, 715.
Strait, Re (S. D.), P. U. R., 1926B, 503.
Streeper, Re (Utah), P. U. R., 1925A, 288.
Sumner, Re (Utah), P. U. R., 1927C, XIII.
Tacoma-Ashford Transit Co., P. U. R., 1925C, 318.
Tolton, Re, P. U. R., 1922D, 576.
Transportation Companies, Re (Calif.), P. U. R., 1918B, 315.
Troy Auto Car Co. (N. Y.), P. U. R., 1917A, 703.
Turner, Re (Ariz.), P. U. R., 1922B, 760.
United Parcel Service v. Intercity Parcel Service (Calif.), P. U. R., 1927B, 111.
United Stages, Re, P. U. R., 1925A, 700; the same title in P. U. R., 1928E, 137.
Union Pacific Stages, Re, P. U. R., 1927E, 321.
Union St. Ry. Co., Re (Mass.), P. U. R., 1919C, 900.
Union Traction Co., Re, P. U. R., 1925E, 507.
Union Transfer Co., Re, P. U. R., 1917A, 225.
Union Transportation Co., Re (Ariz.), P. U. R., 1922A, 608.
Vicory, Re, P. U. R., 1928C, Special Section, 44.
Virginia & Truckee Ry. Co., Re, P. U. R., 1928C, 207.
Walker, Re (Colorado), Decided Dec. 2, 1926.

- Ward, Re (Ariz.), P. U. R., 1925E, 574.
Washington Rapid Transit Co., Re, P. U. R., 1923B, 328.
Washington Rapid Transit Co., Re, P. U. R., 1924E, 321.
Washington Ry. & Electric Co., Re, P. U. R., 1922C, 757.
Waterloo C. F. & N. Ry. Co., Re (Ia.), P. U. R., 1923E, 424.
Wayne Transport Co. v. Harder (Pa.), Complaint Docket 6997.
Wedgewood, Re, P. U. R., 1922C, 171.
Weiner, Re (Me.), P. U. R., 1925B, 357.
Weir, Leslie J., Re (Mont.), P. U. R., 1926B, 357.
Weir, Re, P. U. R., 1926C, 629.
Wentworth, Re (N. H.), Order 1759, July 30, 1925.
Western Assoc. v. Hackett (Calif.), P. U. R., 1915F, 997-1012.
Western Slope Motor Way, Re (Colorado), P. U. R., 1928A, 32.
White Star Line, Re (Mont.), P. U. R., 1924B, 193.
Williams, Re (Cal.), P. U. R., 1923C, 617-19.
Wilson Co., Re, P. U. R., 1920C, 639.
Wood, Re, P. U. R., 1928E, 136.
Wright, Re, P. U. R., 1925B, 141.
Yelloway, Inc., Re, P. U. R., 1928A, 217.
Yonkers Ry. Co., Re, P. U. R., 1925D, 195.
Young v. Stout (Calif.), P. U. R., 1921E, 841.
Youngstown & Suburban Transportation Co. v. Warren-Salem Coach
Line Co. (Ohio), Dec., 4750, August 13, 1927.
Zent, Re (Ind.), P. U. R., 1927C₂, XI.



MOTOR CARRIER REGULATION IN THE UNITED STATES

PART 1

CHAPTER 1

INTRODUCTION

The advent of the gasoline engine has wrought a revolution in the transportation world. The automobile has transformed our conception of time and space, and modified our evaluation of these two elements. No longer does the contemplation of a journey by rural roads produce a feeling of unwillingness, reluctance, or apprehension, but one of adventurous anticipation. Remote acquaintances have become close neighbors. The private motor truck supplements the automobile in speeding up twentieth century life. It is as indispensable to modern business as the automobile is to our social and semi-business relations.

Further recognition of the indispensability of motorized transportation is manifested in the adoption of the private truck to the transportation of goods for the public, and in the appearance of the public passenger bus, representing in design a modification of the automobile and the motor truck. The bus has proved itself a prime factor in the consolidation of public schools; but its chief value is revealed in the transportation of passengers for hire over regular routes.

It appears that from the employment of the motor vehicle as a taxi or transfer in cities there developed the idea of adopting the automobile to a regular passenger service on definite routes over city streets, as substitute for or competitor with street cars. Especially well suited for short runs on city streets, the automobile underwent modifications in design, carrying capacity, passenger comfort, and mechanical dependability. The experience within cities and an ever-increasing demand for quick, frequent com-

munication between cities led to the employment of the automobile in regular intercity public service.

Given particular impetus by wartime exigencies,¹ public motor carriage has expanded rapidly in the last few years. On January 1, 1925, there were in operation 52,925 buses; a year later, 69,425; in 1927, 80,040; in 1928, 86,000 such vehicles were employed.² On the latter date, companies and individuals engaged as motor common carriers numbered 7,102.³ Fifteen motor carrier companies each operate more than 100 buses, and eighteen electric lines do likewise. Today, fifty per cent. of all electric lines operate motor buses.⁴ It is estimated that from 125,000 to 150,000 people are employed in the motor carrier business proper; it is practically impossible to approximate those employed in the motor carrier equipment manufacturing industry.⁵

For equipment, terminals and garages, motor carriers spent in 1926 more than \$300,000,000⁶; the total present investment in motor carrier property is estimated at \$455,000,000.⁷ The proportion between the first figures and the second emphasizes the rapidity with which the industry is expanding.

Volume of business done is another index to motor carrier magnitude. In 1926, motor common carriers transported 2,100,000,000 passengers, and realized a gross revenue of approximately \$300,000,000. It is significant that more than ninety per cent. of passengers carried by motor for hire were carried by common carriers.⁸

1. California Auto Stage and Truck Transportation Department, *Report* 1923-24. Also *Public Utilities Reports*, 1916F, 912-915; hereafter cited as P. U. R.

2. National Automobile Chamber of Commerce, *Facts and Figures of the Automobile Industry*, 1927, 78; cited hereafter as *Facts and Figures*. Also *Bus Facts*, 1928, 5; published by Bus Division of A. A. A.

3. *Bus Facts*, 1928, 9.

4. *Ibid.*, 15-16.

5. M. T. Galbreath, of *Bus Transportation*, *Letter* to writer, March 17, 1927.

6. *Ibid.*

7. American Automobile Chamber of Commerce, *Bulletin*, July 11, 1927.

8. *Ibid.*

Total motor carrier route mileage in relation to both total railroad mileage and to total mileage of surfaced highways serves as another valuable index to the magnitude of motor transportation. Common carriers cover today 263,000 miles, which is almost double the mileage of state surfaced highways, approximately equivalent to the total mileage of state highway systems, and 6,000 more than the mileage of American steam lines.⁹ One company doing business over 5,000 miles of route possesses resources of more than \$2,000,000. On September 11, 1928, there arrived in New York the first bus of our first coast-to-coast line; passengers came through from Los Angeles, a distance of 3,433 miles, in five and a half days. Regular arrivals and departures of buses over this line are now a daily occurrence at the Capital Stage Terminal, New York City.¹⁰ As in aerial and train transportation, sleeper service is now offered to long distance travellers.¹¹

While the above facts reveal an industry of no small proportions, the size of the industry is not all; the organization of the carriers demands attention. In forty states carriers are organized.¹² Through their organizations they are opposing legislation which they deem detrimental and sponsoring that which they believe beneficial to their cause.

Motor carrier lobbyists are not strangers in the National and state capitols. Through the Bus Division representing 2,000 carriers operating 22,000 buses are articulated twenty-two state and regional associations.¹³ The first convention of the Division was attended by 138 representatives from thirty-eight states.¹⁴ No unimportant share has been taken by the Division representatives in drafting and defending proposed Federal regulation of

9. *Facts and Figures*, 1927, 80, 25; *Bus Facts*, 1928, 8.

10. *New York Times*, September 12, 1928, 1.

11. See P. U. R., 1928A₃, Special Section, 9-10; also *Bus Transportation*, September, 1928, 513.

12. *Bus Transportation*, February, 1927.

13. *Bus Facts*, 1928, 3.

14. *Bus Transportation*, July, 1927, 365.

interstate motor transportation. As is true in other utilities, men of ability are directing and perfecting the organizations. The carriers are finding out what they desire and are devising means of securing it.

Five motor carrier bills have been introduced into Congress. The United States Supreme Court has already passed on motor carrier questions in no fewer than nine cases.

In view of the magnitude of the motor carrier industry, the recency of its development, the extent and effectiveness of motor carrier organizations and the degree of actual and potential public interest in the problem of regulating motor transportation, this study of motor carrier regulation is undertaken. We shall be concerned with the motives and means of instituting public regulation, the organization, jurisdiction, and work of the regulatory agency, the scope of regulation, the form of permission to operate as a public carrier, and the process and factors involved in securing that permission. Attention will be given to requirements as to public safety, service, and rates; to the matter of special taxation of motor carriers, and to the transfer and revocation of their certificates to operate. The relation between rail carriers and motor carriers will be treated, and emphasis will be placed on the problem of regulating those motor carriers which are interstate in their operation, the effort of the states to regulate them and the necessity for the Federal Government to deal with interstate operation. Finally, a statement of the principles revealed in the process of regulation and an appraisal of that process will be attempted.

CHAPTER 2

ESTABLISHING REGULATION

The pronouncement of the Supreme Court in *Munn v. Illinois*¹ (1876) laid the basis for successful state efforts at subjecting utilities to public regulation. The grain elevator "standing in the path of commerce and taking toll from all who pass" became clothed with a public interest and subject to regulation in that interest. Fifty years after that monumental decision, motor carriers are running in the paths of commerce and likewise taking toll from those who patronize them. But the public interest as basis for regulating motor carriers differs from that in the case of all other utilities in that extensive use is made of public thoroughfares in the transaction of their business: public highways costing one and a half billion dollars are used in the prosecution of private gain.

Until a short time ago there existed no form of regulation applicable to the motor carriers which was not equally applicable to the owner of the private car. Only seven states undertook regulation before the World War, Pennsylvania taking the lead in 1914. Colorado, Wisconsin, and New York followed in 1915, Maryland in 1916, Utah and California in 1917.

Four states began regulation in 1919²; seven in 1921³; Rhode Island in 1922; six states 1923⁴; Kentucky in 1924; ten states in 1925⁵; and three in 1926.⁶ By the end of 1927 forty-four states had enacted regulatory legislation. Approximately two-thirds of these have established regulation since 1923.

1. 94 U. S. 113.

2. Arizona, Massachusetts, New Hampshire and Vermont.

3. Connecticut, Illinois, Maine, Ohio, New Jersey, Washington, and West Virginia.

4. Iowa, Michigan, Montana, Nevada, Oklahoma and Virginia.

5. Idaho, Indiana, Kansas, Minnesota, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, and Wyoming.

6. Arkansas, Louisiana and Mississippi. Data in notes 2 to 6, inclusive, found in Motor Vehicle Conference Committee Pamphlet *State Regulation of Motor Vehicle Common Carrier Business*, 1927.

MOTIVES ACTUATING REGULATION

The last decade has seen a marvelous rise in the construction and maintenance of highways as a function of state government. Motives actuating the establishment of regulation of motor carriers arise in the first place from the necessity of protecting and preserving those highways. According to the Bureau of Public Roads, United States Department of Agriculture, there were on January 1, 1926, 521,915 miles of surfaced highway. The state highway systems totaled 270,653 miles.⁷ During the year 1926, surfaced roads increased by 35,000 miles. Ohio and Indiana each have more than 4,000 miles of surfaced road.⁸ States with extensive state highway systems in order are Texas, New York, Pennsylvania, and Ohio. California and Illinois rate high on surfaced roads but low on state system mileage. Texas presents something of an anomaly in that rating at the top in extensive state system of highways she has been among the very last to establish regulation of those using the roads for private profits. Her tardiness, of course, is explainable in large part by the fact of the small percentage of her state highway system in relation to total road mileage in the state. Nor has the good roads movement gained such acceptance in Texas as in some of the more densely populated areas of the northeast, middle west, and Pacific Coast sections. The cost of constructing and maintaining the highways is in final analysis paid primarily by the man who owns the private car and private truck, or by the man who owns neither of them.

This non-carrier taxpayer, paying the bulk of the taxes, is entitled to consideration in relation to the carrier who would turn the public thoroughfares into a place of private business. Highway traffic is becoming more congested and the presence of the motor carrier adds nothing to the relief of this traffic condition. In each of the states, New York, California, Ohio, Pennsylvania,

7. National Automobile Chamber of Commerce, *Facts and Figures*, 25.

8. Indiana leads all other States in mileage of surfaced highway. In that State are located enormous gravel deposits.

and Illinois, there are more than a million private cars, and in each from 175,000 to 300,000 private motor trucks demanding a place on, and unimpeded use of, the public highways. Private passenger cars and private motor trucks in the United States reach the enormous figure of 22,000,000.⁹

These figures enable one to appreciate more intelligently the position of the owner of the private car in the use of the highway, and emphasize the necessity of public control over the types of vehicle which would put to a purely commercial use these costly and much demanded thoroughfares.

Protection of pedestrians and of occupants of both public and private motor vehicles using the highways constitutes a second motive for establishing motor carrier regulation.

A third motive actuating regulation is the prevention of undue competition. Often the existing motor carriers have joined forces with public and other private agencies seeking regulation in order that they may be present when the regulatory policy is determined upon. California motor carriers have accepted an invitation to be represented on a committee to propose new legislation.¹⁰ They appeared also at the initial hearings instituted by the commission seeking to determine regulative policy.¹¹ One function of motor carrier lobbies is to make more difficult the establishment of more competitors in motor transportation.

The desire to check competition emanates largely from the rail carriers who seek restrictions on their newly-arrived competitors.¹² To the existing carriers it is clearly a question of self-preservation. Public agencies are coming to see that regulation to restrict competition is highly desirable to safeguard all interests.¹³ Speaking in 1917, the New York public service commission stated that the purpose of the Transportation Corporations Laws of

9. *Facts and Figures*, 20-21.

10. Railroad Commission of California, *Annual Report*, 1926, 22.

11. See below.

12. *Western Association vs. Hackett* (Calif.), Public Utility Reports, 1915F, 997-1012. Hereafter referred to as P. U. R.

13. See Chapter "Principles of Regulation."

1915 was emphatically and unmistakably to protect against unfair and dangerous competition.¹⁴

A fourth powerful motive involved in the instituting of regulation is the necessity of securing adequate, safe, and proper service to the public. The Missouri act of 1927 states that it is the travelling public whose convenience, protection, and benefit justify state regulation. This fourth motive is one the definition, analysis, and safeguarding of which has produced more administrative and legal difficulty than has any other phase of regulation. Easier is the task of the legislature to lay down new rules of action applicable to future conduct than is that of the administrative body to interpret and apply those rules in particular cases.

PIONEER EXPERIENCE OF CALIFORNIA

While the motor carrier industry is yet in its infancy, the movement to regulate it is more so. Some reasonable grasp of the difficulty in establishing regulation by a pioneer state can be gleaned from a sketch of the California experience.

In 1915 the Western Association of Short Line Railroads asked the California railroad commission to assume jurisdiction over one Hackett who was hauling freight by motor over the highways in competition with the railroads. Hackett admitted he was a common carrier in the common law sense, but contended he was not subject to commission jurisdiction as specified in the Public Utilities Act of the state. A hearing was held at San Francisco, September 7, 1915. The essential points as brought out by the commission are here given.¹⁵

Article XII, Section 17 of the State Constitution makes railroad, canal and other transportation companies subject to the control of the state legislature. The Constitution likewise creates the railroad commission and gives it authority to fix rates for hauling

14. *Re Troy Auto Car Co.*, P. U. R., 1917A, 703. For the objects and construction of the 1915 law, see P. U. R. 1916, 33, and 1916D, 10.

15. *Western Association vs. Hackett* (Cal.) P. U. R., 1915F, 997-1012.

freight and passengers by railroad or "other transportation companies," and obligates these agencies to adhere to the rates so fixed. An amendment to the constitution ratified in 1911 declares railways and canals for transporting freight or passengers or express public utilities; likewise pipe lines, and any plant for producing or distributing heat, light, power or water, or for furnishing storage or wharfage facilities "and every common carrier." These public utilities are made subject to regulation by the railroad commission as may be provided for by the legislature. Not only those specified above are subject to regulation by the commission, but likewise any other agencies which the legislature may hereafter declare public utilities.

The amendment of 1911 further provides that the commission shall have such power to regulate rates and service of the public utilities as the legislature shall confer on the commission and that the legislature has unrestricted power to confer on the commission authority over the utilities.

The commission then observed: (1) The constitution makes every common carrier a public utility; (2) every public utility is subject to regulation by commission only as the legislature shall confer authority on the commission; (3) in the *Market Street Railway* case (64 Pacific 1065) the state supreme court has declared that the definition of transportation companies as given in the legislative act of 1880 did not include street railways as being subject to commission jurisdiction; and (4) the Supreme Court has held drays, delivery wagons, freighting wagons, and teaming to be transportation agencies, but not subject to commission jurisdiction. Therefore, concluded the commission: (1) Complainant must show that legislature has actually conferred on the commission power to regulate and control motor buses, auto trucks, and auto stages; (2) our examination of the public utilities act reveals the determination of the legislature to specify exactly the public utilities over which the commission is to exercise control; (3) transportation agencies named in the complaint have

not been put under commission control and the complaint is dismissed.

From this decision of the commission it might appear that the only way to put the complained of agencies under commission regulation would be by specific legislative act. But the Association appealed to the state supreme court, which accepted the commission's inability to regulate the agencies involved insofar as the existing statutes were concerned, but declared that Section 22 of Article XII of the California Constitution as amended 1911 *did give the commission power to regulate motor carriers as being included in the term "other transportation companies."* (Italics added.)

The court ordered the commission to take jurisdiction, whereupon the commission directed all operators of auto stages and auto trucks using the highways for hire to file with the commission time and rate schedules. Soon the legislature enacted the law of May 10, 1917,¹⁶ known as the Auto Stage and Truck Transportation Act, which specifically gave the commission power to regulate auto stages and trucks using the highways for compensation, between definite points or over a regular route. Sightseeing buses, taxicabs, and hotel buses were exempted from regulation by the act, as well as carriers operating exclusively within municipalities.

Under the act the commission instituted public hearings in Los Angeles and San Francisco to investigate the various rules and regulations used in different parts of the state. To these hearings came representatives of practically all the operators, whose evidence aided the commission to reach its Decision 4814. This decision took the form of a body of administrative rules and regulations covering sixteen phases of motor carrier activity, such as sanitation, overcrowding, and safety of the carrier vehicle, and the qualifications and conduct of drivers. Based on actual operating experience as brought out in public hearings, these regulations have thereby the strongest possible recommendation.

16. Statutes 1917, Chapter 213, p. 330.

They proved an efficient working standard in California during the stress of war-time, and have required little modification since. Other states have had an opportunity to pattern their regulations on the California model.

From time to time amendments have been made to the California statutory provisions. Several important changes were made in 1919. One eliminated the previous requirement that an applicant for certificate to operate, before securing a certificate from the commission, must obtain approval from authorities of every county and municipality through which he proposed to run. Another modification enlarged the jurisdiction of the commission from common carriers to include private carriers as well. Transfer of any right attaching to any certificate could be made only by commission approval. Also power to revoke, suspend, alter or amend certificates was conferred on the commission.¹⁷

In 1921 the provision of the Public Utilities Act regarding free passes furnished by railroads was extended to motor carriers.¹⁸ The status of "farm haulers" aroused such agitation that in 1923 a legislative amendment exempted from the necessity of securing a certificate to operate those carriers whose hauling began or ended on a farm.¹⁹ The requirement of a filing fee of \$50 with application for certificates to operate was also set up.²⁰

Motor vehicles engaged solely in the transportation of bona fide pupils to or from home or an institution of learning were exempted from regulation.²¹ A provision was added relative to offering of testimony and other forms of evidence.²² Also power was conferred upon the commission to formulate uniform, non-

17. These provisions established by the Statutes of 1919, Ch. 280, p. 457.

18. Ch. 840, *Statutes of 1921*, 1609. Likewise power to require reports.

19. Ch. 310, *Statutes 1923*, 644. This exempting clause was later declared unconstitutional.

20. *Ibid.*

21. *Statutes of 1925*, Ch. 145, 297.

22. *Ibid.*, Ch. 153, 302.

discriminatory and reasonable regulations applicable to interstate carriers.²³

PROCEDURAL MEANS OF ESTABLISHING REGULATION

Two procedural means have been employed to bring under regulative control motor carrier operation: Construction of existing utility or common carrier law, and statutory enactment *de novo*.

An early instance of regulatory power declared by construction of existing law is that of the Georgia railroad commission in 1915. It declared that under the railroad laws of 1907 it had power to regulate motor carriers.²⁴ The Pennsylvania commission early assumed jurisdiction over motor carriers by interpretation of the public service company law governing common carriers.²⁵ In 1922 the Arizona commission declared that motor vehicles carrying passengers and property for hire were common carriers, that under the state constitution they were public service corporations, and as such subject to the commission.²⁶ Maryland²⁷ ruled in 1915 that all common carrier vehicles on the highway must register with the commission and give additional information.

In 1924 the Nebraska commission issued an order relative to certain fiscal affairs of motor carriers, but later rescinded the order, thereafter confining its attention to such phases of motor carrier regulation as liability protection and safety requirements.²⁸ The Arkansas commission has been unsuccessful in its assumption of power over motor carriers. The state supreme court has held

23. *Ibid.*, Ch. 254, 433. For sketch of the process of constructing the body of California regulatory law, see *Annual Report of Auto Stage and Truck Transportation Department*, 1924-5, 25-30.

24. American Electric Railway Association, *Bulletin* 120, 27.

25. E. M. Vale, Chief of Bureau, to A. E. R. Association, *Letter*, January 12, 1922.

26. Re Union Auto Transportation Co., P. U. R. 1922 A, 608.

27. P. U. R. 1915C, 365, 925.

28. A. E. R. A. *Bulletin* 120, 134-38.

that under the existing railway laws the commission has no power to regulate motor carriers.²⁹

Not only interpretation by commission and court, but construction of existing law by the attorney general has served to bring motor carriers under regulation. The commission of Texas was advised on September 10, 1925, by Attorney-General Dan Moody that the state laws relative to railroads and express companies justified commission control of motor trucks offering service to the public and operating over a regular route.³⁰

In perhaps four-fifths of the states regulation has been instituted by statutory enactment. Most frequently this has taken the form of a separate motor vehicle act conferring on the established regulatory agency power over motor carriers.

One instance appears in which a specific act has created a new agency and conferred on it power to regulate motor carriers.³¹

Sometimes motor carrier legislation in a particular state appears in the general motor vehicle laws, as in the case of Oregon.³²

In several states supplementary acts have been added to the existing public utility act, thereby putting motor carriers on greatly the same basis as other utilities. Examples of this are found in Maryland, Utah and Wyoming.

Michigan affords an example of a combination of special act and general law. The act of May 23, 1923,³³ provides *de novo* for several phases of regulation and declares that the laws of the state governing common carriers in general are applicable to motor carriers.

29. *Ibid*, 9; also *Arkansas Railroad Co. vs. Independent Bus Line*, 285 S. W. 388. This decision is similar to that of *California Commission in Western Association vs. Hackett*, referred to above.

30. A. E. R. A. *Bulletin* 120, 262-65. Texas set up a comprehensive system of regulation in 1927.

31. Kentucky Act of March 5, 1926.

32. *Motor Vehicle Laws of Oregon*, 1925, 58-62.

33. Public Act 209, Regular Session 1923.

EXPERIMENTATION AND EXAMPLE

Necessarily there has been much experimenting in establishing regulation of motor carriers. The states establishing regulation more recently have had an opportunity to profit from the experiences of the pioneer states. Merely a casual examination of representative regulatory statutes enacted by legislatures far apart geographically reveals not only a similarity in statement concerning many regulatory provisions, but also the later statutes reveal a definite recognition of the mistakes in the laws of earlier states and a firm determination to avoid the practical and constitutional pitfalls which have brought grief to regulatory bodies in those states.

Until 1923 no filing fee was required of applicants in California. As a result, there developed much trifling with the commission by irresponsible persons who, scheduled for hearings, failed to appear at the appointed time. In 1923 the Crittenden amendment provided a filing fee of \$50, and this requirement was left undisturbed by the decision of the state supreme court in the *Franchise Motor Freight* case.³⁴ Wisconsin, profiting by California's experience, provided in 1927 for a filing fee of \$25.³⁵ Similarly, Minnesota in 1925 provided for a filing fee of \$50.³⁶ It would seem clear that the experience of California has been used to advantage by these two states.

Legislative enactments for regulating the automobile in public service have inevitably lent themselves to much indefiniteness and vagueness in phraseology. A few examples will illustrate. The California act seeking to regulate every "transportation company" defines the term as being

"every corporation, or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating or managing, any automo-

34. 69 California Decisions 473, April 27, 1925.

35. *Bus Age*, August, 1927, 48. This act became effective in July, 1927.

36. Chapter 185, *Laws of 1925*, H. F. 929.

bile, jitney bus, auto truck, stage or auto stage used in the business of transportation of persons or property, or as a common carrier, for compensation over any public highway in this state between fixed termini or over a regular route."

Such operations as are exclusively within municipalities, and taxicabs and sightseeing buses are exempted from state regulation, as well as "any other carrier which does not come within the term 'transportation company' " defined above.³⁷

The Kentucky statute is greatly similar in phraseology, but prefixes the word "motor" to the term "transportation company."³⁸ Pennsylvania lists many agencies as public service companies, among them being, for our immediate consideration, "stage line corporations" and "common carriers." The latter term is then defined in an extremely comprehensive manner as

"Corporations or persons engaged for profit in the conveyance of passengers or property or both, between points in this Commonwealth by, through, over, above or under land, water or both."³⁹

The Ohio statute applies regulation to "motor transportation companies" and defines the term substantially as does the Pennsylvania act, except that the phrase "any motor vehicle not usually operated on or over rails" appears; and the "by, through, over, above or under land or water or both" phrase of the Pennsylvania statute is omitted.⁴⁰

New York has used terminology a bit odd in subjecting to regulation "omnibus corporations," but the definition of "omnibus corporation" leaves little doubt as to who is subject to the law.⁴¹

The question of whether the regulatory statute properly in-

37. *Statutes of 1917*, Ch. 213, Sec. 1 (c).

38. Act of March 5, 1926, Sec. 1.

39. *Public Service Company Law* of 1913 as Amended, Section 1.

40. *General Code*, Sec 614-84.

41. Article 5 of Act of May 4, 1926, amending the transportation corporations laws.

cluded private contract carrier has given rise to much administrative difficulty and also litigation in California,⁴² Ohio,⁴³ and Michigan.⁴⁴

Ohio has taken steps to avoid the constitutional experience of Michigan in dealing with carriers hauling under private contract. The Michigan statute subjecting all motor carriers to regulation was invalidated early in 1925⁴⁵ by the Supreme Court of the United States, which tribunal pointed out the effect of such statutes was to convert property employed entirely as private carrier into public property by legislative fiat. Following this decision as a precedent the supreme court of Ohio interpreted the regulatory statute⁴⁶ in that state as to exclude private carriers, whereupon the Ohio legislature so amended⁴⁷ the regulatory act as to exempt from its provisions those engaged as carriers under private contract.

STATE REGULATION DECLARED VALID

Much litigation has arisen over specific phases of state regulation of motor carriers. This litigation has usually resulted from the commission interpretation and application of the regulatory statute, and often the courts have reversed the commissions. As precedents are established, especially by the higher state and Federal courts, interpretation becomes clarified. It happens that the commission of one state has been overridden in only one per cent. of the cases appealed, while the reversals in an adjoining state during the same period have reached sixty and even seventy-five per cent. of cases appealed.⁴⁸

But there has been relatively little litigation over the validity

42. *Frost et al. vs. R. R. Com. of California*, 46 Supreme Court Reporter 605 (1926).

43. *Hissem vs. Guran*, 146 N. E. 808 (1925).

44. *Michigan Public Utilities Com. vs. Duke*, 266 U. S. 570 (1925).

45. Note 44.

46. *Hissem vs. Guran*, 146 N. E. 808.

47. *Laws of Ohio*, 1925, H. Bill 90, Section 1.

48. Conferences with regulatory bodies in Kentucky and Ohio, respectively.

of the principle of regulation, and when such has arisen the courts, state and Federal, have taken the ground that such regulation is a valid exercise of the state police power to preserve its highways, to restrict the use of them for private profit, and to protect the health, comfort, convenience, safety, and general welfare of its people.⁴⁹ Between 1915 and 1928 the courts in thirteen different states have decided that regulation is valid.⁵⁰ The state can delegate to the commission and to units of local government the exercise of state power to establish rules and regulations concerning the use of the highways by motor vehicles, and where the commission enjoys the power to determine the period in which the recipient of the certificate shall exercise the privileges granted, the commission may specify in the certificate whatever conditions and terms are demanded by public convenience and necessity.⁵¹ The person who seeks to show a statute unconstitutional must present evidence relative to the application of the statute to himself, and not as it affects someone else.⁵²

49. For a recent statement to this effect, see *Barbour vs. Walker* (Okla. Sup. Ct.), 259 Pacific 552, decided September 13, 1927.

50. *Re Automobile Traffic* (Ariz.), P. U. R., 1915C, 945; *Ex Parte Dickey* (W. Va. Sup. Ct. of App.), 85 S. E. 781 (1915); *Haddock vs. State* (Ariz. Sup. Ct.), 201 Pacific 847; *Mason vs. Intercity Terminal Co.* (Ark. Sup. Ct.), 251 S. W. 10 (1923); *Dobeson vs. Mescall* (New York Sup. Ct., App. Div.), 199 N. Y. Supplement 802, citing *Hadfield vs. Lundin*, 98 Wash. 657; *Schoenfeldt vs. Seattle*, 265 Fed. 726, and *People vs. Rosenheimer*, 209 N. Y. 215; *Gruber vs. Commonwealth* (Va. Sup. Ct. of App.), 125 S. E. 427; P. U. R., 1924B, 193 (Mont.); *Restivo vs. West* (Md. Ct. of App.), 129 Atl. 884; *Greely Transportation Co. vs. People* (Col. Sup. Ct.), 245 Pacific 720 (1926); *Packard vs. Banton*, 264 U. S. 140; *Ex Parte Tindal*, 229 Pacific 125; *Gilmer vs. Pub. Utils. Com.* (Utah Sup. Ct.), P. U. R. 1926D, 469; case in note 49; and more recently *Roberto vs. Commissioners of Public Utilities* (Mass. Sup. Jud. Ct.), 160 N. E. 321, decided March 5, 1928; *Harlacker vs. Adams Transit Co.* (Pa.), P. U. R. 1928A, 12; for decision upholding Wisconsin regulation, see *Bus Age*, July, 1928, 139.

51. *Roberto* case in note 50.

52. *Salt Creek Transportation Co. vs. Public Service Commission of Wyoming* (Wyo. Sup. Ct.), 263 Pacific 621, decided January 31, 1928.

CHAPTER 3

THE REGULATORY AGENCY

ORGANIZATION

Engaged in a minor way in the administration of regulatory legislation applicable to motor carriers are several agencies of state government. Upon the secretary of state are often imposed various duties such as registration of motor vehicles used as common carriers,¹ the immediate oversight often being exercised by a special division of the state department. In Ohio and Virginia the designated subdivision is the commissioner of motor vehicles, which is the general licensing agency of the state. Licensing of drivers is another function often imposed on the secretary of state.² In New York the commissioner of motor vehicles approves the insurance policies required of motor carriers, and registers common carrier passenger vehicles.³ In California the motor vehicle division licenses drivers.⁴ Highway departments are frequently engaged in such regulation. The Pennsylvania department serves as the registration agency;⁵ and in Massachusetts the highway department must signify its consent to the establishment of a proposed motor carrier route before the utilities department will issue a certificate to operate.⁶

The fiscal agencies are utilized in the work (other than for the collection of taxes) as evidenced by the California practice of having common carrier vehicles registered by the motor vehicle division of the department of finance.⁷ In North Carolina, the state revenue department serves as auditor in checking up on the

1. Vermont, Act No. 74, *Laws* of 1925; Indiana; Virginia, *Laws* of 1924, 330; Ohio, *General Code*, 614-97.

2. For example in Ohio, *General Code*, 614-97 and 6290-1; Indiana; Vermont, Act No. 74, *Laws* of 1925.

3. Ch. 413, *Laws* of 1924; Tax Dept., *Letter*, January 28, 1926.

4. Motor Vehicle Division, *Letter*, July 21, 1927.

5. Act of April 27, 1925, P. L., 254.

6. Acts of 1925, Ch. 280.

7. Note 4.

monthly reports made by common carriers as to their gross receipts.⁸ For purposes of administration of special taxes, tax commissions,⁹ and boards of equalization¹⁰ are sometimes utilized.

But it is with the state utilities commission (or its equivalent) that we are primarily concerned in this treatment of the regulatory agency. Considerable variety appears in the type of agency employed.¹¹ Illinois uses the commerce commission; Washington, the department of public works; Idaho, the department of law enforcement; Massachusetts, the department of public utilities; and Kentucky, the commissioner of motor transportation. South Carolina and West Virginia designate the state highway commission, while four states have placed the control in the corporation commission.¹² In nine states regulation is in the hands of the railroad commission.¹³ Ten states possess a public utility commission¹⁴ or a public service commission.¹⁵ The latter two types are essentially alike and the regulatory bodies in Massachusetts and Illinois belong to the same type. Likewise some of the railroad commissions are in effect utility commissions, retaining the "railroad" title merely because they were created to control railroads.¹⁶

8. Interview with Corporation Commission at Raleigh, June 5, 1926.

9. For instance, the Tax Commission of Kentucky in computing the franchise tax.

10. Motor carriers in California are registered with the State Board of Equalization for assessment on gross receipts. *Letter*, July 26, 1927.

11. For this question the most usable source I have found is the digest published by the Motor Vehicle Conference Committee of the National Automobile Chamber of Commerce, *State Regulation of Motor Vehicle Common Carrier Business*, January, 1927.

12. Virginia, North Carolina, Oklahoma, and Arizona.

13. Arkansas, California, Iowa, Minnesota, Mississippi, Montana, North Dakota, South Dakota, and Wisconsin.

14. Colorado, Connecticut, Michigan, Maryland, Massachusetts, New Jersey, Ohio, Rhode Island, Utah, and the District of Columbia.

15. Indiana, Kansas, Louisiana, Nevada, New Hampshire, New York, Oregon, Pennsylvania, Vermont, and Wyoming. (This listing facilitates communication with the proper regulatory body in a particular state.)

16. See Railroad Laws of Minnesota, *General Statutes*, 1923, Ch. 28. A cumulative revision of the basic act. July 1, 1915, the Oregon "Railroad Commission" became the Public Service Commission of Oregon, *Laws*, 1915, Ch. 241.

We can conclude therefore that in fully thirty states the body with administrative authority over the motor carriers is a public utility commission with authority to manage all the utilities in the respective state.

This commission is primarily an administrative agency; yet it takes on the nature of a quasi-legislative and quasi-judicial body.¹⁷ Often the quasi-legislative and particularly the quasi-judicial functions tend to obscure the purely administrative character of the commission. The power of regulatory commissions is exercised directly by the members, membership involving full-time duty and carrying a fair compensation. In only one state does the commission devote its whole time to motor carrier administration.

A survey of the commission membership in twenty-four states reveals much less divergence in number of members than one would expect to find. Illinois shows the mystic seven as the number of members, and Pennsylvania in 1922 revealed the same. In five states the commission consists of five members,¹⁸ and in each of sixteen states the commission is composed of three. The personnel of the commission includes also various bureau and division chiefs, examiners, experts, and engineers. The purely administrative work relative to motor carriers is in charge of a division chief in California, and the administrative phases of public convenience are handled by a bureau chief in Pennsylvania. Subordinates are chosen by the commission, are responsible thereto,¹⁹ and sometimes their salary is fixed by the commission.²⁰

The selection of commission members follows the method ordinarily employed in constituting administrative agencies in general. Popular election is found in several states, as in Minne-

17. See "Powers of Commission," below.

18. New York, Pennsylvania, Michigan, Indiana, and California.

19. Kentucky Act of March 5, 1926.

20. *Public Service Commission Code of Oregon*, Section 5822. All subordinate personnel of the California Commission is appointed by the Commission, and salaries therefor are likewise fixed by the Commission. Public Utilities Act, Secs. 7 and 10.

sota,²¹ and Oregon.²² In Minnesota the election is at-large, while Oregon combines the at-large with the district feature, specifying that one member be elected in the counties west of the Cascades, and one in those to the east, with one at large.²³ Popular election of administrative agencies is an echo from the early opposition to gubernatorial dominance, but more emphatically a reflection of the belief of the pioneer, frontier community that democracy and popular control consist of popular election of public officers. Of course the same arguments which can be made for and against popular election of all administrative officers apply with equal force to this method of selecting public utility commissions.

A more usual method employed in making up the commission is appointment. This is done usually by the governor with the advice and consent of the senate, as in Ohio,²⁴ or by the governor alone, as in California and Kentucky.²⁵ Freedom to choose from the state at large appears the rule. Selection by appointment proceeds on the theory that the more capable commissioner cannot necessarily be secured by election, and also that insofar as possible, subordinate administrative officers should be responsible to the governor. Of course the spoils principle will influence the governor's appointments. Admirable as is the practice of giving the governor unhampered authority over administrative appointments, it is nevertheless subject to criticism.

Nominal qualifications are specified by the act creating the commission. Prohibitions against having a pecuniary interest in public utilities in the state or elsewhere are often enumerated,²⁶ or

21. Minnesota, *General Statutes* 1923, Ch. 28, Sec. 4628.

22. *Oregon Public Service Commission Code*, Sec. 5818.

23. *Ibid.* The Railroad Commission of Kentucky is elected entirely by the district plan; but this agency has never had any jurisdiction over motor carriers.

24. *General Code*, Section 487.

25. California Public Utilities Act, Section 3 (a); Kentucky Act of March 5, 1926, Section 36.

26. *Oregon Public Service Commission Code*, Section 5819. Enacted fifteen years ago, of course this Act does not mention Motor Carriers as a utility a pecuniary interest in which is a disqualification.

interest in a particular utility without regard to geographical location;²⁷ or holding any other office of profit or trust under the state or the United States;²⁸ or being in the employ of any utility.²⁹ Bona fide residence within the state, and abstinence from serving on a committee of any political party are required in Oregon.³⁰ A minimum age is specified in Kentucky.³¹

Required to devote his full time to his official duties, the commissioner should receive adequate compensation. Failure to offer a reasonable salary tends to limit the administrative positions to men of mediocre ability and training. Tempting salaries will attract those not interested primarily in public service. Various sections of the country show a wide range in the salary paid commissioners. In Oregon, it is \$4,000 a year, while California pays \$8,000; Kentucky pays \$4,000; in Minnesota the compensation is \$4,500, and in Indiana and Ohio, \$6,000. North Carolina pays \$5,000, while New York heads the list at \$15,000 a year. This figure is not only actually high among the states for utility commissioners, but relatively so among official salaries in the United States in general.

A matter of particular concern in the efficient performance of the duties of the commissioner's office is his tenure. Commissioners being chiefly appointive, tenure shows a tendency to depend on either the governor's pleasure or his success at reelection, although often terms of four and six years are found. New York recognized the advisability of a tenure of sufficient length to permit familiarization with the work and also that public service

27. Railroad Laws of Minnesota, *General Statutes* 1923, Ch. 28, Section 4631.

28. *Ohio General Code*, Sec. 491.

29. Minnesota, Note 27. California Public Utilities Act, Section 7, likewise provides, but permits a commissioner's *voluntarily* becoming interested later in securities of agencies subject to commission jurisdiction to continue in office for a reasonable time and failure to divest self thereof in reasonable time vacates the office. Such becoming interested in Oregon *ipso facto* vacates the office.

30. Note 26.

31. Note 25.

will gain by the experience of the utility commissioner. While appointment rests with the governor, the statute prescribes a term of ten years.³²

Removal of members of the commission is fraught with serious consequence as to the regulation of utilities. Governors with extensive power to remove make or unmake utility regulation. An examination of the personnel of the commissions as of January, 1923 and 1927, reveals several states whose personnel was the same; and a few instances in which a complete change was made. But these extremes are not found in the states with extensive utility problems. Among the eight leading utility states³³ one finds a total commission membership of forty-two. Massachusetts leads with minimum change in personnel, only one substitution taking place on a commission of five. Of the forty-two memberships, changes took place in twenty-three during the four year period. It is understood that in two of these states three other changes have taken place since January, 1927. Measured by the standard of tenure existing among the personnel of governmental bodies subject to political appointment, it would seem that the utility commission tenure compares favorably with the tenure of other government agencies.

JURISDICTION

A consideration of the jurisdiction of the commissions can proceed along several avenues of approach. At least four phases of jurisdiction must be treated: the types of public service agencies under control of the body regulating motor carriers; the territorial extent of the jurisdiction over motor carriers; the types of motor carrier subject to state regulation; and the various phases of activity of those subject carriers which the commission may investigate, supervise, and direct.

As pointed out above, in some thirty states the regulatory

32. New York Public Service Commission, *Letter*, March 24, 1926.

33. California, Illinois, Indiana, Massachusetts, Michigan, New York, Ohio, and Pennsylvania.

body is known as the public utility commission (or its equivalent) therefore it usually follows that the commission has authority over all the utilities, including motor carriers.

The Ohio *General Code* illustrates the catalog of agencies subject to state utility commission authority:

"SECTION 502. This chapter shall apply to the transportation of passengers and property between points within this state, to the receiving, switching, delivering, storing and handling of such property, and to all charges connected therewith, including icing charges and mileage charges, to all railroad companies, sleeping car companies, equipment companies, express companies, car companies, freight and freight line companies, to all associations of persons, whether incorporated or otherwise, which do business as common carriers upon or over a line of railroad within this state, and to a common carrier engaged in the transportation of passengers or property wholly by rail or partly by rail and partly by water or wholly by water. In addition thereto, the provisions of this act shall apply to any and all other duties, service, practices and charges of the railroad company, incident to the shipping and receiving of freight, which are proper subjects of regulation, excepting only that they shall not apply" to regulation of interstate and foreign commerce.

Section 614-2 brings under commission jurisdiction telegraph and telephone companies, agencies furnishing electricity, or artificial or natural gas, oil by pipe lines, water, steam or heat by pipe lines, signaling agencies and interurban railroads. Section 614-86 extends commission jurisdiction to motor transportation companies.

In these three sections the *Code* confers on the commission authority over the whole field of public utilities, but public utilities owned by municipalities, or railways transporting passengers

exclusively within municipalities are exempted from such jurisdiction. This is only typical of the situation in several states.³⁴

The Michigan and Pennsylvania commissions possess jurisdiction over not only the usual utilities and motor carriers, but over aerial taxi service doing aerial advertising, photography, or carrying passengers.³⁵

While often the regulatory body has authority over every utility in the state, it must not be inferred that this is the fact in every state. Where the regulatory body is the corporation commission the range of types of enterprise subject to its jurisdiction is much wider than in case of the utility commission. Where the regulation is in the hands of the highway department or an agency with authority over motor carriers alone, the range is necessarily more restricted.

In favor of the Kentucky plan, wherein the commissioner of motor transportation has no other utility to supervise, it may be argued that the commissioner can become a greater specialist than where the jurisdiction is multiple in its application. That argument is unshakable. Conferences with the Kentucky agency have revealed a somewhat greater degree of certainty and definiteness of grasp of motor carrier regulation and its problems than was observed in conferences with agencies enjoying multiple jurisdiction.

But the multiple-jurisdiction plan, as exemplified in the utility commission, possesses a highly essential advantage not attendant upon the Kentucky plan: It makes for correlation and coordination of the various transportation agencies so as to produce an economically efficient system. The interrelation of motor

34. The Ohio Supreme Court has interpreted as *exclusive* the commission authority conferred by these sections over motor transportation companies, so long as they do not operate entirely within municipalities. *C. I. Motor Bus Corp. v. Publ. Utils Com.*, 152 N. E. 25; for example of municipal operations exempted, see *Re Automobile Traffic* (Ariz.), P. U. R. 916 E, 789.

35. *Re Air Taxi Service*, P. U. R., 1927C₂, VIII, decided May 11, 1927; P. U. R., 1928A₃, Special Section, 22-3.

carrier and steam lines and of motor carrier and electric lines demands today a broad perspective which will intelligently visualize each part of the transportation system in relation to the whole. This cannot logically be expected where these transportation agencies are controlled by separate governmental bodies but it can be demanded from the utility commission.

The plan of putting motor carrier control into the hands of the highway department seems to embody the view that motor carrier regulation bears such a close relation to highway construction and maintenance that ability in the latter will carry over into the former administrative task. Or it may proceed from the belief that conservation of the highway and its use for that part of the public owning and operating its own private vehicles is the paramount function of the highway department. But this latter view, liberal as it seems, might be said to disregard that part of the public not owning and operating vehicles on the highway, but being served by motor carriers operating thereon.

Control of motor carriage by a corporation commission tends to look on that form of transportation as a business, like insurance, banking, or manufacturing. But motor carriage is more than a business; it is a *public* business in a sense that banking, insurance, and manufacturing are not.

Measured by the broad rule of efficient coordination and correlation of all transportation agencies, it is submitted that the Kentucky plan and the state highway department plan of regulating motor carriers are too narrow in scope and too limited in application; and that regulation through a corporation commission with its multifarious duties in connection with non-transportation agencies is too broad and inclusive. From the viewpoint that the highways are to be used for the benefit of not only those who operate their own vehicles thereon, but also of those who are served by the motor carrier operating thereon; and from the conviction that the various transportation agencies can be correlated more efficiently and advantageously, so as to secure proper

service to all the public whether using one means of transportation or another, it is also submitted that the control of motor carriers logically belongs to the public utility commission.

Territorial extent of jurisdiction concerns itself with whether the commission has authority over motor carrier operations into, within, or out from municipalities.

A survey of thirty-nine states shows that the commission has control over operations into and out from municipalities, and twenty-two give state commission authority over those operating into, out from, and within municipalities. In the first group we find such states as North Carolina, Michigan, Ohio, California,³⁶ Washington and Oregon; representatives of the second group include Massachusetts, New York,³⁷ Maryland, Pennsylvania, Illinois and Colorado. It will be observed that states of each group are found in all sections of the country.

The California commission has jurisdiction over a line beginning in a city and ending in the same city, but which goes outside the city, although on the "outside" portion of route no local transportation is proposed.³⁸ Regardless of city ordinances, the Arizona commission has exclusive power to determine whether a motor carrier shall use the city streets.³⁹

If the line is entirely within the combined area of two continuous cities, a certificate to operate is not necessary in Michigan, according to the state supreme court.⁴⁰ The Iowa act of 1925 considers a motor line between two towns not more than one mile apart to be within municipal jurisdiction.⁴¹ South Carolina treats as municipal operation that operation which extends not

36. The question of territorial extent of jurisdiction is treated at some length in *Re Transportation Companies*, P. U. R. 1918, B, 307-8.

37. See application of this principle in P. U. R. 1916, B, 820.

38. *Re Pacific States Express*, P. U. R. 1922 D, 298.

39. *Re Phoenix Motor Coaches*, Decision 2236, April 13, 1925.

40. *Red Star Motor Drivers Assoc. v. Mich. Pub. Utils. Com.*, 209 N. W. 46.

41. Section 14.

more than two miles beyond the municipal limits,⁴² and Mississippi⁴³ allows three miles as the limit to which a municipal line may extend beyond city limits without coming under the jurisdiction of the state commission.

In an early stage of regulation the state undertook to apply its requirements to carriers whose operations extended beyond the state; that is, to interstate carriers. It is now established that the state through its commission or otherwise cannot require certificates of convenience and necessity from interstate operators.⁴⁴ Only a limited jurisdiction can be exercised by the state⁴⁵ over those lines extending into another state.

A survey of forty-one states reveals that in thirty-one, carriers of either passengers or property or both are subject to commission control; in the others, only passenger carriers are subject to control. With two exceptions the states in which property carriers are not under commission control are on the Atlantic seaboard.⁴⁶ The absence of regulation for property carriers points to one of three conclusions: Existence of no real need for such regulation, which seems hardly tenable in great commercial communities like New York and New Jersey; failure of legislature and commission to sense the existing need for regulation of property carriers; or the successful opposition of the property carriers to any movement for public regulation. Subjecting property carriers as well as passenger carriers to regulation has been held valid in Ohio.⁴⁷

42. Act of April 8, 1925, Sec. 8.

43. Act of March 18, 1926, Sec. 1 (h).

44. *Buck v. Kuykendall*, 267 U. S. 307 (1925); *Bush vs. Maloy*, 267 U. S. 317 (1925).

45. See treatment of regulation of interstate carriers.

46. Connecticut, Kentucky, Maine, Missouri, New Jersey, Massachusetts, New Hampshire, New York, Rhode Island, and Texas. For Missouri administrative declaration on exemption of property carriers, see P. U. R. 1928 A, 677 and 1928 B, 1 (Capital Stage Lines and Pickwick System cases, respectively.)

47. *New York Central R. Co. v. Pub. Utils. Com.* (O. Supreme Court) 154 N. E. 797, decided December 28, 1926.

Some states confine their regulatory authority to carriers operating on a regular route and between fixed points; but in other states the status of irregular operators has received attention.⁴⁸

Operators functioning under private contract are not within the scope of the regulation as usually applied today, though there was a strong tendency earlier to subject them to regulation as if having the same status as common carriers.

The phases of motor carrier activity subject to control are treated elsewhere; it suffices to say here that the regulatory power has not been applied to every phase of carrier activity to which the law has extended control.⁴⁹

The regulation of intercity carriers reveals that the process is practically entirely in the hands of the state authorities so far as the power of the units of local government is concerned. Generally there has been no wavering in so establishing state authority; Nevada presents an illustration to the contrary. The act of 1919 put motor vehicle common carriers under the jurisdiction of the state public service commission. Four years later regulatory control was by statute transferred to the boards of county commissioners, and all orders of the commission under the 1919 act were set aside. In 1925 the legislature returned to the state commission the former jurisdiction with the limitation that certificates issued between 1923 and 1925 remain intact unless specifically modified by the commission.⁵⁰

Statutes in a few states require local consent as a prerequisite for the state commission to grant a certificate to operate motor service through the corporate limits of local government. The extent to which local authority may go has received some administrative attention. The routes specified in a local consent in New York state must be either granted or rejected entire by the state commission; no power is possessed by the latter agency to modify

48. For example, Kentucky Act of March 5, 1926, Sec. 1b and 21a.

49. The status of private contract carriers and the phases of activity subject to regulation are treated in the chapter on "Scope of Regulation."

50. *Re Virginia & Truckee Ry.*, P. U. R. 1928 C, 207. January 21, 1928.

the local consent in that regard.⁵¹ The Missouri act leaves to the city authority to determine over which streets the recipient of a state certificate may operate.⁵² Motor vehicle maximum load permissible on city streets are to be fixed by municipalities in Indiana, which likewise may prescribe traffic regulations.⁵³

The Massachusetts commission has held that it should not issue a certificate to operate public vehicles through a municipality against the wish of the latter "unless there are impelling circumstances that require such."⁵⁴ In Missouri the commission's granting a certificate by no means deprives a municipality of its control of streets, but the commission does not believe the state act meant to condition the granting the certificate on municipal consent.⁵⁵ While the commission may not select the streets to be used, it need not wait till the city does so before the commission grants the certificate.⁵⁶ It seems clear from the administrative evidence available that the extent of inconvenience suffered by an intercity carrier authorized by state certificate, and unable or unwilling to meet the city requirements as to use of streets is to so "detour" as to avoid the municipality.⁵⁷

The holder of a certificate to operate motor service between two points in Arkansas is under no obligation to secure a license from the terminal city, though in that city he gets his most profitable business, nor to receive or discharge passengers at any point in limits of municipal corporations along the route.⁵⁸ In New Jersey only state authority is necessary to permit an intercity

51. *Re Buffalo Motor Coach Co.*, P. U. R. 1927 E, 848.

52. *Re Bitzer*, P. U. R. 1928 B, 675.

53. *Olds Trails Express Co. v. Brazil*, P. U. R. 1928 A, 440; also see *Gregg v. Terre Haute*, P. U. R. 1928 A, 534.

54. *Re Hart*, P. U. R. 1928 B, 523.

55. *Re Purple Swan Safety Coach Lines*, P. U. R. 1928 A, 201-2.

56. *Re Capital Stage Lines Co.*, P. U. R. 1928 A, 677.

57. An instructive decision on this point is that of the Wisconsin commission, December 19, 1927. *Re Auto Transportation Company Applications*, P. U. R. 1928 B, 448.

58. *Duncan v. Jonesboro* (Ark. Sup. Ct.), 1 S. W. (2nd), 58.

carrier, if he proposes to do only "through" business and no local business.⁵⁹

It has been held that municipalities have no power to fix rates or regulate service of carriers certificated by the state commission.⁶⁰

WORK OF REGULATORY AGENCY

The work of the commission consists primarily of receiving and deciding applications for certificates and of hearing complaints relative to motor carrier service. Minor phases of commission work include inspection, investigation, and receiving of reports.

Sessions for commission work may be held in the capital city or elsewhere as the commission deems necessary. Sometimes the working day of the commission is specified in the statute.⁶¹ Generally a majority of the commission constitutes a quorum. The Ohio statute provides that vacancies shall not impair the holding of sessions by the remaining members of the commission. Thus it appears in this state at least, that majority means a majority of those appointed and sworn in, and not a majority of the total membership provided for by law. There is a practical advantage in this provision, but also a potential political danger since in this state the members appointed by the governor and senate can be removed by the governor alone. Other than the requirement that the governor must give a member a copy of the charges against him and an opportunity to be heard, there appears to be no restriction on the removal power. The governor's decision is final, and he merely files that decision with the secretary of state.⁶²

The essentials of procedure in cases of application for a certificate are presented in connection with the discussion of certification. At this point it is convenient to trace the handling

59. *Re Choate & Tumulty*, P. U. R. 1928 A, 98.

60. *Re Yelloway, Inc.*, P. U. R. 1928 A, 217.

61. For example in Ohio, *General Code*, Sec. 494.

62. *Ibid*; Sec. 488.

of complaints against motor carriers as part of the commission work. Among the leading states, New York affords a representative illustration of handling complaints. Any party interested may file a complaint with the New York commission. No definite form of complaint is required; but the name and address of complainant and complainee together with the act or omission complained of must be clearly given. No verification of this complaint is necessary.

Where possible, complaints are settled informally; those proving not adjustable informally are made formal complaints and referred by the staff to the commissioners in their collective capacity. Thereupon the commission investigates by inspector inquiry, letter, or order to the complainee to answer the charges made, and by a public hearing.

To the public hearing the commission may subpoena witnesses compel the production of books, papers, and documents; and counsel may appear. After a hearing has been given and a decision reached, a rehearing can be secured if the aggrieved person can convince the commission that this is justified. Some ninety per cent. of the complaints filed with the New York commission are settled informally. Experience shows that most of the complaints filed relate to service; occasionally complaints are made as to rates.⁶³

The reports of the California commission indicate the volume of work done by a commission in a leading state and also the relative part motor carrier work constitutes of the total commission work.⁶⁴ During the fiscal year 1924 the commission handled 1,061 formal applications, 372 being motor carrier applications. Of the 1,115 formal applications the next year, 460 concerned

63. Information on procedure in New York has been drawn from *Rules of Practice before the Public Service Commission of the State of New York*, Rules I-IV, and from a questionnaire filled out for me by the Commission, Sept. 7, 1927.

64. Reports of the Auto Stage & Truck Department of the Railroad Commission of California, 1924, 1925 and 1926.

motor carrier activity. In 1926 applications to the number of 1,643 were filed, 908 relating to motor carriers and 735 to all other utilities. Of these 908 applications, 775 were for certificates, seventy-nine for leases and transfers, twenty for security issues, sixteen for increase in rates, nine to establish rules and regulations, five to abandon or reduce service, and two for approval of agreement.

During the year 1926 the commission held 670 hearings.

Is commission work effective? No complete answer can be given; but we can consider number of appeals taken and the number of the appealed cases reversed.

During the first year of its existence the new Kentucky agency had no case reversed, though a few were appealed. Because of the noticeable degree of stability in the establishment of the service when the new agency took over the work and the short time it has been functioning, this record is not a fair test.

It appears that in Ohio for the year 1925 approximately seventy-five per cent. of the commission decisions appealed to the court were reversed,⁶⁵ and about eighteen months later the reversals amounted to fifty per cent.⁶⁶ Twenty-five per cent. of the truck decisions are appealed.⁶⁷ The first two facts indicate a wide divergence between the views of the commission and of the state supreme court; the latter emphasizes a lack of public confidence in the commission decisions.

Very few appeals are taken from the New York commission and those cases appealed are usually affirmed.

Informal complaints handled by the California commission in 1924 totaled 266. Of these, thirty-four involved lost baggage; fifty concerned rates; twenty-two were customers' petitions for refunds; sixty-four complaints were registered against service, and eighty-three against unauthorized operation of motor service.

65. Statement of J. B. Dugan, Acting Secretary of the Public Utilities Commission, January 3, 1926.

66. *Ibid.*, July 26, 1927.

67. *Ibid.*

During the year 1926 complaints filed totaled 3,461, of which only 361 related to motor carriers. Decisions rendered in 1926 were 1,908, or an increase of 535 over the preceding year. Much of the increase in formal applications filed in 1926 followed the decision of the state supreme court invalidating the statutory exemption of farm haulers from the certificate requirements.

A remarkable record has been established by the railroad commission of California. Although 1,908 decisions were rendered in 1926, the commission was represented in only twenty-eight court actions during the year. So small a percentage of appeals signifies a high degree of public confidence in the fairness and justice of the commission decisions. Of the twenty-eight cases appealed, the commission was sustained in every instance before the superior courts, the state district courts, the state supreme court, and before the United States District Court. Twenty-seven of the twenty-eight were settled in these tribunals. In only one case, that of *Frost v. Railroad Commission of California*,⁶⁸ decided by the United States Supreme Court, was the commission reversed; and here Justices Holmes, McReynolds, and Brandeis dissenting held that the commission was correct.

When one realizes that subject to the California commission are 655 motor carriers, one of which has assets of over \$6,000,000, two others above \$1,000,000, and three others above \$500,000, and that one of the companies operates over 5,000 miles of route, he can better appreciate the huge administrative problem presented by motor carriers to the California commission.

Nor is that record unusual on the part of the commission. Since the commission was reorganized in 1911 it has issued 17,021 orders. In 167 instances, the order has been taken to the courts, and of these 167, covering a period of fifteen years, only twelve

68. 46 Supreme Court Reporter 605, decided June 7, 1926. But the enforcement is sometimes weak is evidenced in the failure of the regulatory agency in Washington State to stop illegal operation of a carrier of "several years" standing, although it had ordered him to cease operation. R. Krakenberger, P. U. R. 1928 C, 234.

have been reversed. Even the popular "99 44/100% Pure" has been exceeded by this quasi-judicial record of the railroad commission of California!

But the rulings of one regulatory body have little if any effect on those subsequently made in another state. Statutory differences are largely responsible for this. The California commission gave expression to this fact in 1915 in commenting on decisions on jurisdiction as made by commissions in Georgia, Arizona, Illinois, and Maryland.⁶⁹ Decisions of other commissions have proved of little value in affording precedents for motor carrier regulation in Colorado.⁷⁰ Thus it results that each commission must "work out its own salvation" in the solution of its own problems.

The effectiveness of commission regulation in the states has been appraised, as regards general public utilities, by Henry R. Hayes,⁷¹ president of Investors Bankers Association, who recently appeared before the Walsh Senatorial Investigating Committee. He says that many abuses have been prevented, and profits and rates "rigidly restricted." While commissions have prevented and remedied abuses in motor carrier operation, one must conclude that rates and profits have received only slight attention from the commissions.

69. *Western Association v. Hackett*, P. U. R. 1915 F, 1010.

70. *Mills v. Rocky Mountain Park Transportation Co.*, P. U. R. 1920 B, 557.

71. P. U. R., 1928A₃, Special Section 7.

CHAPTER 4

SCOPE OF REGULATION

EXEMPTED CLASSES

Certain special classes of motor carrier are exempted from state regulation and therefore beyond the commission jurisdiction. Among these we may consider first "farm haulers." This class is found particularly in some of the western states, notably California, Washington and Minnesota; and also in some of the southern states.

In California all motor carriers who were engaged in transporting farm products or implements in such a manner that at least one terminus of the operation was a farm, were exempted from the regulations prescribed by the Auto Stage and Truck Transportation Act as amended in 1923. This Crittenden amendment,¹ however, was invalidated by the state supreme court in *Franchise Motor Freight Association vs. Railroad Commission of California*,² decided April 27, 1925. In a unanimous opinion the court declared the provision unconstitutional because it gave to farm haulers a privileged position not enjoyed by haulers of other commodities. Such a classification as that made by the act was arbitrary, and there existed "no natural intrinsic, or constitutional grounds" for such grouping. Consequently, the court issued a writ directing the commission to assume jurisdiction over farm haulers.

The Minnesota act, passed two weeks before the California decision, exempts haulers of agricultural, horticultural, and dairy products exclusively, and operating between farm and "primary market."³ Washington makes a similar exemption.⁴

1. "Crittenden Amendment," Ch. 310, Stats. of 1923. In California seventy-five per cent. of the farm products were delivered by motor truck.

2. 69 California Decisions, 473. Likewise excluded from scope of regulation is the transportation of goods by the bona fide owner. Re Higley (South Dakota), P. U. R. 1927 D, 374.

3. *Laws of Minnesota*, 1925, Ch. 185 H. F. 929 Sec. 1 (b).

4. *Washington Compiled Statutes* (Remington), Sec. 6387 (d).

An Oregon provision empowers the public service commission to exempt from regulation as a carrier every vehicle hauling freight or passengers in a rural community, this hauling not being done on a commercial basis.⁵

Another exempted class of motor carrier is the sightseeing bus. This exemption rests on the social and educational nature of the activity in which the vehicle is employed.

In New York state the commission has held that since the Transportation Corporations Laws do not specifically make the sightseeing bus a common carrier, it is not to be considered such by the commission;⁶ likewise, this commission held that a sightseeing vehicle making one trip a day between Buffalo and Niagara Falls, giving the passengers time to see points of interest at each city, was not a bus line or stage route in the sense of the New York laws. But in Pennsylvania, motor vehicles engaged in carrying persons from a fixed point to different points within and beyond state boundaries have been adjudged common carriers; state certificates of public convenience are required for their operation.⁷

Taxicabs constitute another class enjoying exemption from state commission control. At the basis of this exemption is the special on-call, go-anywhere nature of the service offered, and also the locus of their activity. The Illinois commission has ruled that an operator leaving regularly from some point but going to any of various destinations as desired by his passengers, making trips only on demand, and observing no uniform rate schedule is not a public utility over which the commission has jurisdiction.⁸ Again, the same commission has held that a taxicab observing no regular schedule of time, rates, or routes is not a public utility

5. *Motor Vehicle Laws of Oregon*, compiled by Secretary of State, 1925, 58. Kansas has a farm haul exemption; in the South, North Carolina, South Carolina, and Virginia likewise have farm haul exemption provisions.

6. *Re International Ry. Co.* (N. Y.), P. U. R. 1919 F, 63-67.

7. *Re Bush* (Pa.), P. U. R., 1925C, 1.

8. *Elmwood Park v. Anderson*, P. U. R. 1923 A, 139.

and does not come under its jurisdiction.⁹ Operations entirely within the municipality are often exempt from commission jurisdiction, but the practice is not at all uniform, many states extending the jurisdiction of the commission over operations within the municipality. But in Ohio exemption does not extend to a motor vehicle in the employ of a line begun in a municipality and later extending to a non-contiguous city.¹⁰

But excepting carriers exclusively within municipalities, the most important class exempted is the school bus. It enjoys its privileged position because of the nature of its employment; that nature is more easily recognizable than is that of the sightseeing bus. The school bus is found in every state. Of the 35,867 in operation on January 1, 1928,¹¹ Indiana had 5,055; Ohio, 2,593; North Carolina, 3,234. Until 1925 school buses in California were required to secure certificates to operate, as were other motor carriers; the records show that on June 30, 1924, there were only two holders of certificates to operate school buses. An amendment in California in 1925 brought the school bus relief from the certificate requirement, and today there are 1,625 school buses in the state. What vehicles are school buses seems too evident to ask; but the Montana commission has held that a bus operating under contract with the trustees of a school and transporting teachers to and from school is not a school bus.¹³ Thus it appears that transportation of bona fide pupils to and from school constitutes a vehicle a school bus.

9. P. U. R. 1923 B, 86-90. See also West Virginia Court of Appeals decision in *Logan County Bus Co. v. Howard Ellis*, 129 S. E. 751.

10. *Cincinnati Traction Co. v. Public Utilities Commission* (Ohio Supreme Ct.), 150 N. E. 81.

11. *Bus Facts*, 1928, 12.

12. *Auto Stage & Truck Transportation Department Report*, 1923-4.

13. *Re Kirchan*, P. U. R. 1925 B, 541. In Louisiana a bus carrying and private contract children to and from school does not transform itself into a common carrier by taking up workmen along the route. *Re Griffon Vallia*, P. U. R. 1928 A, 652. (Annot.)

COMMON CARRIERS—WHO ARE AND WHO DETERMINES?*

For the purpose of this study we now come to the most important phase of the scope of regulation: The types of motor vehicle which are subject to regulation. It was early declared that while the legislature is given authority to delegate to the commission power to regulate motor vehicles in public service, the commission may not do so until it has actually received that delegation of power from the legislature; and that the commission can exercise only such regulatory power as the constitution permits the legislature to delegate.¹⁴ Consequently it will be worth while to examine first the state legislation in seeking to determine what types of motor carrier come within the jurisdiction of the state regulatory body.

Occasionally the legislative enactment avoids the term "common carrier" in prescribing jurisdiction, and uses "auto transportation companies,"¹⁵ or "motor transportation company."¹⁶ Although the Ohio provision specifies motor transportation companies as subject to the regulatory authority of the utilities commission, the purport to limit that jurisdiction to common carriers is unmistakable, as seen in section 614-84 specifically exempting private contract carriers from the incidence of the law. Before 1919, the California act limited the commission jurisdiction to common carriers,¹⁷ but an amendment of that year so extended the scope as to include those operators using the highways between definite points or on fixed routes "for compensation or as a common carrier." This amendment came some two years after the state supreme court had held as common carriers automobiles

*I published substance under this caption in *Bus Transportation*, May, 1929.

14. *Western Association v. Hackett* (California), P. U. R., 1915 F, 997.

15. *Washington Compiled Statutes* (Remington), Sec. 6387 (d).

16. Kentucky Act of March 5, 1926, Sec. 1; *Ohio General Code*, Sec. 614-84.

17. Auto Stage and Truck Transportation Department, *Report*, 1924-5, 29.

engaged in the transportation of passengers or freight for hire over routes between cities on the public highway.¹⁸ The effect of the amendment of 1919 was to enable the commission to extend jurisdiction over a motor vehicle operating for hire without having to prove it a common carrier.

Some statutes provide regulation for those motor vehicles in public service which are public utilities.¹⁹ The Illinois commerce commission has held as a public utility within the meaning of the 1921 act an operator hauling for an unincorporated association, organized not for profit but which seeks as members every person having merchandise to be hauled between fixed points over regular routes.²⁰ Similarly, it was held that the scope of "public utility" is such as to include a motor vehicle carrying passengers at regular intervals between cities and at fixed fares accepting and unloading indiscriminately whoever offers.²¹ In the latter case, the commission interprets public utility to mean substantially common carrier.

But whether "motor transportation company," "auto transportation company" or some other expression is used, the object of the legislative enactment is to put under the regulatory power of the commission those motor vehicles which are common carriers. And "common carrier" is the term employed usually in

18. *Western Association v. Railroad Commission of California*, 173 Cal. 802. The Oklahoma statute does not define common carriers and recognizes as common carriers motor carriers operating on regular routes or between fixed termini for hire. Ch. 113, *Sess Laws* 1923, Sec. 2. But the California Supreme Court some five years later said that the power added by the amendment did not amount to "arbitrary discretion." *Holmes v. Railroad Commission of California*, 242 Pacific 486.

19. For example, Illinois Public Utility Act of 1921.

20. *Re Jacksonville-Springfield Transportation Co. v. Beeley*, P. U. R. 1926 E 741-748. See also *Jacksonville R. Co. v. O'Donnel* (Ill.), P. U. R. 1915, 583.

21. *Re White Lines Motor Bus Co.*, P. U. R. 1927 C, VII, decided March 2, 1927. Utah Supreme Court held that an operator for hire, but having no intention of establishing a regular route is a public utility and subject to regulation as such. *Public Utilities Com. vs. Garviloch*, 18 Pacific 272.

fixing jurisdiction. Many of the statutes set out to specify exactly what is meant by the term; the definitions range from the brief and comprehensive through the detailed, lengthy and involved. Hardly any two statutes agree, but a statement of the substance common to all the regulatory statutes would be approximately this: Those individuals, companies, or corporations engaged in the operation of motor vehicles carrying passengers or property or both over the public highways for hire between fixed termini or over regular routes are common carriers and subject to the jurisdiction of the commission.

Perhaps as brief and all-inclusive a statement of what constitutes a common carrier as can be found appears in the Pennsylvania statute declaring to be common carriers all those agencies "engaged for profit in the conveyance of passengers, or property or both between points within this commonwealth by, through, over, above, or under land, water or both."²² It is hardly conceivable that any transportation for hire could escape this inclusive definition.

Necessarily statutes can only sketch the regulation, leaving to the administrative agencies the work of dealing with detailed difficulties as they arise. To find out what the term "motor carrier" means and does not mean in actual practice, one must resort to the decisions of the commissions and to court opinions. Since relatively few of the commission opinions are appealed to the courts, and since by no means all of those appealed are reversed, it must be concluded that for *practical* purposes the meaning of the law is revealed in the decisions of the commission. When the commission undertakes to extend its jurisdiction to a particular carrier operation, the matter will not come to a formal

22. *Public Service Company Law* of 1913, as amended through 1925, Art. I. Other statutes setting out to define common carriers in a representative manner are Minnesota *Laws*, 1925, Ch. 185, H. F. No. 929, Sec. 1 (f); Maryland, *Passenger and Freight Motor Bus Laws*, compiled by Commissioner of Motor Vehicles, Secs. 189 and 195; Virginia Act of April 13, 1923, Sec. 1 (d); Michigan Act of April 23, 1923, Secs. 1 and 3.

hearing unless a strong doubt exists in the mind of the carrier as to the correctness of the commission action.²³

As early as 1915 the public service commission of West Virginia upheld as valid a municipal ordinance declaring common carriers, jitneys²⁴ operated within a municipality;²⁵ and in 1917 similar authority was upheld in Massachusetts under the Act of 1918.²⁶

The Georgia railroad commission in 1915 held that the 1907 railroad law should apply to motor vehicles operating over regular routes at fixed rates; that they are common carriers and under commission jurisdiction. This is an interesting illustration of jurisdiction established by construction of general railroad law.

Automobiles for hire on regular routes over public highways are declared common carriers and public service companies in Pennsylvania;²⁸ and offering the automobiles either between state points or wherever passengers wish to go makes no difference, for they "are common carriers. . ." ²⁹ In Arizona, motor vehicles carrying passengers and property for hire are declared common carriers, without reference to operation over public highways or between fixed points or over regular routes.³⁰ Evidently the common carrier character of motor carriers in the last named state can be established with less than the ordinary difficulty.

A motor truck line hauling certain kinds of freight in competition with railways and accepting the commodities in question indiscriminately between two designated points is a common

23. A collection of the commission rulings in cases involving the question whether a particular operation is a common carrier service, covering the past thirteen years, reveals negative decisions in more than half the cases.

24. The term "jitney" originated from the price of a ride in these vehicles; a jitney is a western slang expression for a nickel or five cents.

25. *Smith v. Nunnally*, P. U. R. 1915E, 177-78. Similarly, *District Columbia Commission in P. U. R. 1915E*, 642.

26. P. U. R. 1919C, 903.

27. *Georgia Ry. & Power Co. v. Jitney Bus Co.*, P. U. R. 1915C, 928.

28. *Allegheny Valley St. Ry. Co. v. Greco*, P. U. R. 1917A, 727.

29. *Ibid.*, 723.

30. *Re Union Auto Transport Co. (Arizona)*, P. U. R. 1922 A, 608.

carrier, according to the Colorado commission.³¹ And likewise are automobiles competing with a railway and holding out themselves as auto service between two designated points.³² These two Colorado decisions are in line with that of the same commission in 1920 to the effect that unless competition exists between a motor carrier complained of and a steam or electric line, the commission cannot under the statutes of 1913 and 1915 entertain the complaint.³³ The conclusion is clear that during a period of five years this commission has established the principle that existence of competition is one standard for determining whether a given operator is a common carrier.

The Ohio supreme court has ruled that an operator who hauls for self but who advertises for public business and receives from the latter fifty to sixty per cent. of his income is a common carrier and must have a certificate to operate thus. In the same case likewise was a truckman hauling for one party under private contract but doing twenty per cent. of his hauling for the public declared a common carrier.³⁴ The court in its reasoning stressed three points of immediate concern here: (1) In holding out his property (truck) to public patronage, Craig dedicated his property *in part* to public use; (2) his claim that he is doing some hauling for himself is insufficient to exempt him from regulations imposed on common carriers; (3) the legislature has power to authorize the commission to determine who is a common carrier.

A company "collecting parcels and packages in a city and forwarding them to destination by use of facilities of existing carriers, and in some cases transporting them by leased vehicles" has been adjudged a common carrier and subject to regulation.³⁵

31. *Re Kidd*, P. U. R. 1925C, 414.

32. *Denver and I. Ry. Co. v. Clark*, P. U. R. 1925E, 596.

33. *Mills v. Rocky Mountain Transportation Co.*, P. U. R. 1920B, 557. This was further borne out in *D. & S. S. S. Co. v. Tilden* (Colorado), P. U. R. 1926D, 574.

34. *Craig v. Pub. Utils. Com.* (O. Sup. Ct.), 150 N. E. 795. *Italics* in mine.

35. *United Parcel Service v. Intercity Parcel Service*, P. U. R. 1927B, 11.

Delivering packages under contract with a certain department store is not a common carrier operation.³⁶ These two decisions of the California commission clearly recognize that holding out service to the public is an essential mark of being a common carrier.

According to a recent decision in New Jersey, a bus carrying workers to and from work over a fixed route and for definite pay does assume the common carrier character.³⁷ This carrier was not holding out to whoever offered, but carried only the particular class specified. This is an extremely close approach to private contract carriage as interpreted in states like California and Ohio. A vehicle transporting workers between definite points for compensation paid by the employer of the workers comes within the regulatory jurisdiction of the California commission. Bus transportation of a baseball club over a circuit and according to contract pay figured on a bus mile basis is unlawful unless a certificate therefor is obtained.³⁸ Declaring that operation on a regular time schedule is not an essential characteristic of a common carrier, the Colorado commission has held as a common carrier an operator who offered to carry at all hours all persons between definite points.³⁹ Nor can an authorized common carrier cast off his character by operating his certificated vehicles off the specified route just enough to call his car a "hired car." Such "deviated" operation is itself common carriage.⁴⁰ Further, the Pennsylvania commission has ruled that the holder of a certificate who uses an uncertificated vehicle to transport indiscriminate parties and groups to various indefinite points is operating illegally, for such transportation constitutes common carriage.⁴¹

In the above state an operator taking workers to a silk mill in

36. *Anderson v. United Parcel Service*, P. U. R. 1928A, 265.

37. *Doskovitch v. Pub. Utils. Com's'rs*, 138 Atl. 110, decided June 29, 1927.

38. *California Transit Co. v. Scott*, P. U. R. 1928A, 385.

39. *Harlacker v. Adams Transit Co. (Pa.)*, P. U. R. 1928 A, 12.

40. *Re Gioconelli Bros.*, P. U. R. 1928A, 425.

41. *Maryland v. Rubin*, P. U. R. 1928A, 245.

42. *E. P. Electric Co. v. Kline*, P. U. R. 1928B, 678.

the morning and carrying them home in the afternoon, the carrier taking up also whoever signalled him en route constitutes himself a common carrier, despite the fact that he was carrying the workers at the request of the silk mill management.⁴³ The defendant here contended that his service was "call and demand" service, but the commission swept aside the contention and required that he secure a certificate of public convenience and necessity to continue such operation as that in which he was engaged.

Operating between fixed points, not observing any regular schedule, but hauling goods for hire on contract with several firms constitutes the operator a "motor carrier" and subjects him to regulation, said the Oklahoma supreme court.⁴⁴ Here regular schedule was not held the essential character of a common carrier. A transportation enterprise operating between definite points "for regular and unsolicited clientele" secured by informal "understandings" and terminable by notice of either party is a common carrier and subject to regulation in Pennsylvania.⁴⁵ The facts in this case indicate that a mere subterfuge was undertaken. Only a fictitious "blind" was vainly attempted by a truck operator in California who hauled for various members of an association whose head company made a single contract with the truckman.⁴⁶

Advertising in a telephone directory and soliciting business by correspondence were strongly persuasive evidence that the operator was a public and not a private carrier, ruled the commission of Louisiana.⁴⁷

On the other hand, there is a body of decisions checking attempts to subject to regulation motor carriers not possessing

43. *Edwards Transit Co. v. E. C. Burns*, P. U. R. 1927E, 478.

44. *Barbour v. Walker*, 259 Pacific 552.

45. *Lehigh Valley Transit Co. v. Erb*, P. U. R. 1928A, 607.

46. *Re Hirons*, P. U. R., 1928D₄, Special Section 75.

47. *Public Service Co. v. Johnson Motor Freight Line*, P. U. R. 1928B,

the necessary common carrier character. These decisions, like their opposites, occur in various sections of the country.

A motor vehicle engaged in hauling passengers and baggage clearly and unmistakably on a for-hire basis can not be subjected to the public service law of Missouri.⁴⁸ An individual employing his truck to deliver coal, grain, merchandise, or melons in particular cases and for certain people on a for-hire basis, but observing no regular schedule is not a common carrier in Colorado.⁴⁹

Recently the activity of the Standard Oil Company has given rise to litigation in South Dakota. The state railroad commission ruled that in hauling oil, oil products, and other merchandise according to routes and charges fixed under private contract, the company trucks became subject to regulation under the law of 1925, and ordered them to comply therewith in thirty days. But the state supreme court on writ of certiorari reversed the commission order on the grounds (1) that the company was delivering its own products direct to consumer or to stations whence consumers procured the products, the price being the same in either case; and (2) that the company did not offer to carry goods or passengers other than its own. The company vehicles were not for hire, said the court, and therefore could not be regulated as such.⁵⁰

The question of fellow workers riding back and forth to work in one another's cars has been passed upon in Pennsylvania, Ohio and Maryland. In the first state it was held in 1925 that employees living in one town and working in another do not become common carriers by using one another's cars in going to and from work.⁵¹ The Maryland court of appeals has said that an agreement of an automobile owner to take in his car five other workers to the same factory in which he worked, for definite pay, the general public being excluded from the use of the car, does

48. *Re Scofield Bus Lines*, P. U. R. 1926D, 661.

49. *Re Pratt*, P. U. R. 1927C, 509.

50. *Murphy v. Standard Oil Co.* (S. D. Sup. Ct.), 207 N. W. 92.

51. *Smith v. Shaw*, P. U. R. 1925A, 529.

not constitute the owner a common carrier.⁵² Similarly the Ohio supreme court has decided that a worker who carries in his own car four fellow workers to their place of employment is a private and not a common carrier.⁵³ It is therefore evident that the convenience offered workmen by fellow worker in transporting them to and from their mutual employment is not a public convenience, although the features of regular route and compensation are present, and that therefore such service does not amount to common carriage.

The owner of trucks who on six occasions in summer brought young people to camp, and who infrequently takes out a party on sleigh ride or hay ride *but who does not hold himself out to the public or solicits passengers, nor operates over a regular route* is not a common carrier in Pennsylvania.⁵⁴ Operator hauling under contract with five persons in Greeley whatever goods they wished transported to and from Denver is not subject to the state law of Colorado regulating public carriers.⁵⁵

Is there such an institution as a part private carrier and part common carrier? The effect of the decision in the *Craig* case is decidedly in the affirmative. And in a recent decision the Pennsylvania commission in passing on the status of an operator who contracts with an employer to transport workers to and from work, recognized the private nature of the transportation and of the agreement,⁵⁶ but ruled he was a common carrier.

What transforms a private carrier into a public carrier? A few specific cases in point appear. A carrier himself in applying for and receiving a certificate of public convenience and necessity converts his enterprise into common carriage, it has been established in Indiana.⁵⁷ Here the commission had viewed the exist-

52. *Towers v. Wildason*, 109 Atl. 471.

53. *State vs. Thompson & Neible*, See *Ohio Law Review*, Jan. 31, 1927. For a Montana ruling exempting private carriers, see P. U. R. 1926C, 496.

54. *Harder v. Pub. Service Co.* (Pa. Superior Ct.), P. U. R. 1927D, 560.

55. *Board of Com's'rs v. Clayburg*, P. U. R. 1928B, 780.

56. *Northampton Transit Co. v. Sandt*, P. U. R. 1926 E, 799.

57. *Re Reeder*, P. U. R. 1926D, 55.

ing service as inadequate, and decided that public interest demanded the issuance of a certificate bringing under the public liability protection requirement the transportation service being offered on the particular highway. Consequently, this operator of hitherto private service rather than to lose the business which he had built up secured the certificate and thereby transformed himself into a public carrier.

A taxicab accepting passengers anywhere on the route covered by a certificate holder and discharging them likewise, receiving same pay as is charged by the certificated carrier, thereby transforms himself into a utility, according to a ruling of the Illinois commission.⁵⁸ In 1923 the California commission in refusing permission to applicant to haul eggs for members of a poultry association, declared there was no adequate reason for limiting the service to those specified. The commission offered a common carrier certificate or none at all, and the applicant chose the former.⁵⁹ Thus the commission virtually forced the applicant who had been operating as a private carrier to become a public carrier.

The standard of determining what is a common carrier has been attempted by the Colorado regulatory agency. It is in large degree the number of shippers and population of the given community.⁶⁰ In a more practical way does the decision of the supreme court of that state in another case aid in establishing the standard of measurement: "Not by what the charter says but by what the operator does. Courts sweep—schemes to evade the law—aside as so much rubbish." Viewing public carrier and

58. *Austen Brothers v. Bloom*, P. U. R. 1925D, 363. But a taxicab going beyond the limits of a municipal corporation to deliver an occasional passenger does not thereby transform himself into a common carrier. *Ark. Supreme Court*, in *State v. Haynes*, 300 S. W. 380.

59. *Re Williams*, P. U. R. 1923C, 617-19. But a state statute requiring a private carrier to secure a certificate to operate his vehicle is unconstitutional, said the U. S. Supreme Court in throwing out a later effort of California to so regulate private carriers. *Frost v. R. R. Com.*, 46 Sup. Ct. Reporter 605. This decision has been followed by the Maryland Court of Appeals in the *Rutledge* case, 138 Atl. 29.

60. Note 55.

common carrier as being equivalent terms, the court says that when a service assumes such proportions that it "may affect so considerable a fraction of the public, it is public in the same sense in which any other may be called so." "Public" is interpreted as not meaning "everybody all the time."⁶¹ Whether an operator is a common carrier is not determined by what he calls himself, we find the Colorado agency saying later, nor by the equipment he uses, but by the character of the service he renders.⁶² To the same effect has spoken the Kentucky court of appeals.⁶³

At the regional hearings conducted in 1926 by the Interstate Commerce Commission there was revealed a deplorable lack of understanding as to what constitutes common carriage. But the tendency seemed to be to regard as a common carrier that operator who runs between fixed points, on a regular route, and on a definite time schedule.

The Ohio supreme court has recently stated that included in the scope of power of the commission is the authority to say what is a public utility service and as such a common carrier.⁶⁴ But in this announcement the court was demonstrating the insufficiency of the mere dictum of the statute which conferred this power, for the court was, in that very instance adding the weight of its own and higher authority to the ruling of the commission. Thus one is forced to the conclusion that while statutes may be as explicit as possible in defining the term common carrier, the great volume of interpretation and application must be done by the commission with final review by the courts. And relatively few cases get to the latter. While the task of setting a norm of what is a common carrier has not been unattended by besetting difficulties, an encouraging start has been made in the field of motor carrier regulation.

61. *Davis v. Colorado*, 276 Pacific 801.

62. *Re Gioconelli Bros.*, P. U. R. 1928A, 425.

63. *Peoples Transit Co. v. Louisville Ry. Co.*, 295 S. W. 1055.

64. Note 21.

PHASES OF MOTOR CARRIER ACTIVITY
SUBJECT TO REGULATION

We now turn to examine the statutes as to what phases of motor carrier activity are subject to commission regulation. Much variation is found, but several phases appear in each of a great number of states.

Establishing operation is most in evidence. Generally, operation as a common carrier is predicated on the securing of a certificate. The outstanding exception to this is the bona fide operator on effective date of regulatory act.

Power over rates and charges, either to fix, or to approve those proposed by the carrier, exists by legislation in twenty-nine states; over operating schedules in seventeen; authority to prescribe regulations for safety and service is conferred by legislation in twenty-two; to fix routes, specifically in seven; to require reports and other data in nineteen; to supervise fiscal operations in thirteen; specific authority to prescribe rules and regulations is frequent; and in more than a dozen states broad powers to supervise and regulate are conferred upon the commission.

In stipulating concerning reports, some states, for example Maine, specify detailed requirements, while in others merely the authority to demand reports is expressed. Supervision over fiscal affairs, as authorized in the statutes, ranges from a mere requirement that the carrier file a statement of his financial condition to the commission's setting up a uniform system of accounting, and to commission discretion in allowing or disallowing the issue of motor carrier securities. Liability insurance is a usual protective requirement.⁶⁵ Among the less usual powers⁶⁶ granted the commission by legislative provision one finds the authority to supervise contracts made by the motor carriers subject to regulation; to

65. Held valid in *Re Common Carrier Bus Lines* (Nebraska), P. U. R. 1925A, 442.

66. On this question of powers permitted the commission by legislation, see the Motor Vehicle Conference Committee Digest, *State Regulation of Motor Vehicle Common Carrier Business*.

regulate the relations between the carrier and the public (noticeable in some of the western states); to require proper facilities; and to authorize the commission to make investigations into carrier conduct. The South Dakota commission is empowered to prevent discrimination; that of Wyoming to act as arbitrator.

But for two reasons it must not be inferred that the powers specifically granted the commission as presented in the preceding paragraphs constitute the sum total of specific authority possessed by the commission. In the first place, the powers specifically conferred are broad, general, and inclusive. Under such grants as that "to supervise and regulate" an administrative body could set up a whole system of regulation. Commissions have been prompt and profuse in the issuance of a body of rules and regulations ancillary to the powers specifically granted and clarifying the commission jurisdiction.

Secondly, by exercise of the discretionary power⁶⁷ to interpret the provisions of the law which confer a specific power, such, for example, as that to grant, refuse, amend, or revoke a certificate, the commission necessarily builds up a body of precedents and principles, which could not possibly be provided for in either legislation or in the promulgated rules and regulations.

67. For examples of the exercise of this power of discretion by the California Commission, see P. U. R. 1918B, 299; for the exercise by the Vermont Commission, see *Re James*, P. U. R. 1923E, 858-60.

PART II

PROCESS OF REGULATION: INTRASTATE

CHAPTER 5

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

In statutory and regulatory provisions of the states there often appears the term "public convenience and necessity." The origin of this expression antedates by at least twenty years the rise of the motor carrier. Before 1900, road laws of the state often put upon the courts the duty of determining whether public convenience and necessity demanded the construction of a particular proposed road authorized under a form of optional law. Having determined that convenience and necessity of the public demanded the construction, the court seems to have expressed its findings in a certificate which came to be known as a certificate of public convenience and necessity.¹ This term has been used relative to extension of street car lines. Authorization for railroads subject to jurisdiction of the Interstate Commerce Commission to make extensions of lines or building of new lines by railroads, getting possession of a railway or running one, or abandonment of service requires a certificate of convenience and necessity. Thus the institution of certificate of public convenience and necessity made its debut into the realm of interstate commerce by the Esch-Cummins Act of 1920.²

Nor is the requirement in the state sphere at all confined to the motor carrier. The Pennsylvania Public Service Company Law required the certificate of public convenience and necessity for any public service company's acquiring a controlling interest

1. Lilienthal and Rosenbaum, "Motor Carrier Regulation by Certificate of Public Convenience and Necessity," in *Yale Law Journal*, December 1926, 166-7.

2. *Ibid*; Sections 18, 19 and 20 of the Act provide for the Certificate

in another, for the automatic adjustment of rates, for connecting telephone lines or telegraph lines, for securing additional privileges by charter amendment, or for a foreign corporation to do business in the state.³ The California Public Utilities Act contains a similar provision.⁴ For exercising any new or hitherto unused privilege to operate a plant in a community where existing service is adequate a telephone company in Ohio must secure a certificate of public convenience and necessity from the utilities commission.⁵

One motive actuating the requirement of a certificate of public convenience and necessity has been to preserve the highways. It was early felt that the motor vehicle for hire was not only using the highway for profit but also that this vehicle subjects the highway to much more wear than does the private automobile. As these vehicles have become heavier, it has been more clearly recognized that their use of the highway must be restricted. To do this the certificate has proved the most ready and effective means. This motive for certification is evidenced in the "public highway" phrase so common in the regulatory statute. The frequency of that phrase is ample testimony that certification is connected with highway preservation.

Another important motive has been to secure proper service to the public. This motive is evidenced in the provisions requiring proved public convenience and necessity as the essential basis for authorizing the establishment of service. The courts have not been slow to recognize this as a valid motive in requiring the certificate.⁶ The question of whether existing service is adequate, or whether the applicant is able to furnish proper service has proved the deciding factor in many cases.⁷

3. Articles II, III, and V.

4. Section 50.

5. *General Code*, Sec. 614-52.

6. California Supreme Court in *Frost Case*, 240 Pacific 26; 70 California Decisions, No. 3707. Similarly, the Ohio Supreme Court, in *Estabrook Public Utilities Commission*, 147 N. E. 762 (1925).

7. See below "Factors in granting and denying certificates."

A third motive is restriction of competition, both with existing steam and electric lines, and with the existing motor carriers. The profitableness of any public service depends, to a great degree, upon the paucity of operators which shall be allowed to offer service to the public. Unrestricted competition means impaired revenues, and this in turn spells financial disaster to both the carrier and those who are employed by the carrier or have invested in the enterprise. The motive of restricted competition has become a powerful if not dominating one in certification in recent years; yet in some jurisdictions restriction on competition is only nominal.

Certification as a requirement has been actuated in every case by the desire to subject motor carriers to regulation in general, not merely in regard to the phases of activity mentioned above, but also in regard to safety of operation, liability guaranteed, reasonableness of rates, and publicity in carrier activity. The requirement of a certificate of public convenience has proved the gate of general admission through which must pass the motor carrier who would use the highway as a public service thoroughfare.

EXTENT AND VALIDITY OF USE OF CERTIFICATE

The preexistence of certificates of public convenience and the necessity in the regulation of other utilities made it logical that the widespread determination to regulate motor carriers should find expression in requiring the same form of authorization from the motor carrier. Thirty-one states specify the certificate of public convenience as the proper form of authorization to operate a motor vehicle in public service on the highways. In the other states the terminology varies somewhat, the permit being specified in six states, the certificate of permission being required in one, and the certificate of registration in one. North Carolina requires a franchise certificate; New Jersey, a consent (merely approval by state commission of local consent to operate) and Vermont uses

the term certificate of public good.⁸ Practically every commission has received specific power from the legislature to require certificates of public convenience and necessity from motor carriers engaged in public service. It is well that such is the rule, since in at least one state it has been declared that power to require a certificate is not conferred by implication in the statute authorizing regulation.⁹ This legislative grant of power to require certificates has been upheld in several cases, an early one appearing in New York, where the state supreme court declared the requirement a valid exercise of the police power.¹⁰ In the same year the above court likewise validated the requirement of a certificate from a motor carrier operating between municipalities.¹¹ Likewise the requiring of certificates is valid in Pennsylvania,¹² and in Connecticut.¹³

TERM OF CERTIFICATE

What is the term of the certificate? A few states such as Kentucky, South Dakota, and Michigan limit the certificate to one year's duration. North Carolina specifies not more than three years, and that maximum is allowed the certificates in practice. Several other states prescribe a maximum term apparently leaving the commission complete authority to choose within the limit specified. Among these we find Oregon whose statute says certificate shall run for not more than four years; West Virginia, not more than five; Arizona, not more than ten; while Maryland places the maximum term at twenty years.

8. A. E. R. A. *Bulletin* 120, 1927, IX. Texas has begun regulation since this bulletin was published.

9. *Arkansas v. Independent Bus Lines* (Ark. Supreme Ct.), July 12, 1926, reported in National Association of Railway and Utility Commissioners *Bulletin* 75, 1926.

10. 156 N. Y. Supp. 140, December 3, 1915. A similar view in Wyoming. *Salt Creek Transportation Co. v. Pub. Service Com.*, 263 Pacific 621.

11. *Public Service Commission v. Hurtgar* (N. Y. Supreme Ct.), 154 N. Y. Supp. 897 (August, 1915).

12. *Scranton R. Co. v. Walsh* (Pa.), P. U. R. 1916D, 18.

13. *State v. Durazzo* (Conn. Sup. Ct. of Errors), 118 Atl. 81 (1922).

But the indeterminate certificate is found in most of the states, Ohio, California, and Indiana, for example. The advantage of the indeterminate term is that no wholesale annual renewal of certificates burdens the administrative agency. This routine task may tend to become merely perfunctory, and thereby defeat the purpose of an effective annual checking up on the conduct of the holder of the certificate. A positive and more important advantage of the indeterminate certificate over the term certificate is that plans for expansion and improvement can be made by the carrier, and that capital to effectuate those plans will be attracted to the industry more readily than if the permanence and stability of the industry are jeopardized by the short term certificate which may necessitate legal and political scrambles for renewal. The New York court seems to have gone farthest in recognizing the dangers of uncertainty of tenure in holding that the certificate tends to possess the character of a perpetual franchise.¹⁴

On the other hand, Dr. E. B. Stason¹⁵ is of the opinion that because of the recency of establishing motor transportation, its being yet in the experimental stage and its unproved permanence, the indeterminate certificate should not be allowed motor carriers.

NATURE OF CERTIFICATE

Considerable inquiry and discussion have arisen relative to the legal nature of the certificate. As early as 1915 it was held by the West Virginia supreme court of appeals that a common carrier enjoys a legal privilege to use the highway inferior to that possessed by the public in the ordinary use of the highway; that no citizen possesses a "right" to use the highway for private

14. *Colonial Motor Coach Co.*, 215 N. Y. S. 159, affirmed 217 N. Y. S. 907.

15. Professor of Law, University of Michigan, "The Indeterminate Permit for Public Utilities," *Michigan Law Review*, February, 1927, 354-95. In October, 1927, Dr. Stason was appointed by the Michigan Bus Association as one of a commission of five to study the legal status of the bus.

business.¹⁶ The business use of the highway is a privilege which the state might grant, or withhold."

Lilienthal and Rosenbaum take the view that a certificate holder seems clearly to possess "an interest of substance, a property right."¹⁸ Some of the cases cited by those authorities seem a bit far-fetched.¹⁹ The Ohio supreme court has held that a certificate is not a franchise; that recipient acquires no property right in the highway over which he operates.²⁰ In this case, the court overruled the commission order authorizing the transfer of a certificate in a deal where there was involved an excess of more than \$100,000 above the claimed value of the equipment. The court emphatically refused to allow the holder of a certificate granted on a basis of public convenience to receive cash or its equivalent for the operating privilege conferred. Authorization to use the highway for purpose of transportation for hire is not property; it is not a business; neither good will nor going value attaches to such a privilege. These are truly significant legal elements laid down by the highest court in a state whose highway system has few equals and probably no superior.

Nine months later the above court had occasion to reemphasize that the certificate is not property, and that therefore the transfer of it could not be governed by the laws applicable to the transfer of property.²¹ On March 5, 1928, the highest tribunal in Massachusetts declared that a certificate is not a contract or property, and the revocation of the certificate "deprives the holder of no vested rights."²²

The North Carolina act of 1927 refers to permission to operate

16. *Ex Parte Dickey*, 85 S. E. 781.

17. *Jerome Hester v. Railroad Commission* (Ark. Sup. Ct.), 287 S. W. 53.

18. *Yale Law Journal*, December, 1926, 163-94.

19. *Ibid*, 168-70.

20. *Penn. R. R. v. Pub. Utils. Com.*, 155 N. E. 694. Popularly known as *Buckeye Service Case*."

21. *Blackmore v. Pub. Utils. Com.*, 160 N. E. 27.

22. *Roberto v. Com'srs of Pub. Utils.*, 160 N. E. 621.

motor service as "franchise certificate"; but as usual, there is silence as to whether the certificate possesses cash sales value. The Utah supreme court has held the certificate to be a limited franchise.²⁴ The Missouri act does not allow the commission to grant a perpetual certificate and so no perpetual monopoly can be created thereby.²⁵ Indiana seems to view the certificate as a franchise to which cash sales value does attach. After the commission had refused a third time to approve the payment of \$250,000 in excess of the valuation of the equipment, the circuit court on October 25, 1927, ordered the commission to approve the sale of the stock of the Peoples Motor Coach Company to the Indianapolis Street Railway. If this decision stands, Indiana will have definitely gone over to the view that cash value does attach to the certificate of public convenience and necessity.²⁶

In holding that the certificate possesses the nature of a perpetual franchise, the states of New York,²⁷ Indiana, and California represent the extreme opposite to that taken in Ohio and Missouri. Wherever the franchise tax is applied to the carriers operating under a certificate, as in Kentucky,²⁸ the inference is clearly toward recognizing the certificate as possessing the qualities of a franchise. The Michigan certificate more closely resembles that of Ohio which is as near a pure license as can be found. Taking the country as a whole, the certificates more resemble licenses than franchises.²⁹

WHO MUST HAVE A CERTIFICATE

Having sketched the origin, purpose, and nature of the certificate, we next turn to a more practical question: Who must have a certificate? The answer to this question has been made in

23. Senate Bill 630, Session 1927, effective June 30, 1927.

24. *Public Utils. Com. v. Garviloch*, 181 Pacific 272.

25. *Re Chicago-Detroit Motor Bus Co.*, P. U. R. 1928 C, 103.

26. *Bus Transportation*, May, 1927, 290, and December, 1927, 701.

27. *Colonial Motor Coach Co.*, 215 N. Y. Sup. 159 and 217 N. Y. Sup. 907.

28. *Blue Coach Lines v. Lewis* (Ky. Ct. of App.), 294 S. W. 1080.

29. Conference with Dr. Stason.

part in connection with the jurisdiction of the commission over common carriers.

In almost universal acceptance, common carriers³⁰ must have a certificate to operate, but occasionally there is heard a decision with not so strong emphasis to that effect. Such a decision was rendered in 1926 by the Minnesota supreme court in *Minnesota v. Boyd Transfer and Storage Co.*,³¹ where it was held that a hauler of household furnishings between Minneapolis and other indefinite points was a common carrier, but that as he did not operate on any predetermined route, and as he might never pass over the same road a second time, he was not within the scope of the statute of 1925 requiring certificates of operators "between fixed points or over regular routes."

But some specific instances in which the question of whether a particular carrier must get a certificate was involved will serve to amplify and illustrate the meaning, and particularly the application, of "public convenience and necessity."

Railroads wishing to establish passenger and freight service over certain routes along public highways must secure the certificate of public convenience and necessity.³² Since the prospective operator was in this instance already a common carrier there would arise little if any difficulty in requiring a certificate. The high powered vehicles of today operating on the highways must have certificates according to the New Hampshire supreme court, which reasons that the 1919 Act regulating jitneys likewise applies to present-day vehicles.³³

Subterfuges are of no avail in seeking to evade necessity of securing a certificate. Where an applicant previously denied a certificate to operate as a common carrier nominally forms an

30. See the regulatory statutes of the various states; also the treatment of commission jurisdiction *supra*.

31. N. A. R. and U. Com's'rs. *Bulletin* 61, 1926.

32. Re N. Y., N. H. & H. Railway. (Mass. Dept. of Public Utils.) P. U. R. 1926B, 343-4.

33. *Haselton v. International Stage Lines*, 133 Atl. 451.

association of ninety per cent. of the shippers in the community and binds himself to haul for members only, which agreement he does not keep, but hauls for non-members as well, charging all at a fixed rate based on weight and mileage, he is only seeking to escape the law by a "pretense of employment" and is operating illegally. He must secure a certificate to continue his operation. In like manner, a motor vehicle owner in getting his passengers to make a chartering agreement is merely seeking to escape the certificate requirement.³⁵ Of similar effect are the absence of definite schedules, and the practice of frequent refusal of business; these are insufficient grounds for exempting the carrier from the certificate requirement.³⁶

A certificate is indispensable for the employment of a motor vehicle to transport butter at a fixed price per case by the month and for a truck transporting newspapers at a flat rate between given cities and intermediate points; the latter operation in effect constitutes transportation over a regular route and between fixed termini.³⁸

It has been held that a taxicab can so operate as to transform itself into a subject of the certificate requirement. Operating between two towns so consistently as to amount to a regular schedule requires a certificate.³⁹ When must the carrier secure the certificate? Thirty-six states specify in their regulatory statutes that the certificate must be secured before operation begins.⁴⁰ Often the commission in its "Rules and Regulations" repeats the provision of the statute,⁴¹ and the commission may have

34. *Davis v. Colorado* (Col. Supreme Court), 247 Pacific 801.

35. *Restivo v. West* (Md. Ct. of Ap.), 129 Atl. 884.

36. *Coastwise Co. v. Pellegrini* (Calif.), P. U. R. 1927 C, 396.

37. *San Rafael Freight & Transfer Co. v. Lawson* (Calif.), P. U. R. 1927C, 93-4.

38. *Ibid.*

39. *Young v. Stout* (Calif.), P. U. R. 1921E, 841 (abstract).

40. Of course, this does not apply to bona fide operators on effective date of regulatory act.

41. For example, Rule 3 of the Colorado Commission.

occasion to emphasize in its decisions the serious purport of such provision.⁴²

Among those motor carriers who need not have a certificate to operate we find several types. First, we have the specially exempted classes such as sightseeing buses, taxicabs, hotel buses and school buses.⁴³

Secondly, those operating exclusively within municipalities are usually exempted⁴⁴ from the state certificate; but there is no uniformity among the states as to commission jurisdiction over urban operators. A third group, found in some eight states, is carriers of property exclusively. Fourthly, farm haulers constitute a type free from certification in a few of the western states. But from the constitutional viewpoint a most significant group of exempted motor carriers is the private contract carriers, the exemption of this group following the decision in the *Duke*⁴⁵ and *Frost*⁴⁶ cases.

Whether a carrier hauling under private contract can be required to take out a certificate of public convenience and necessity has produced some difficult problems of administration. No phase of regulation has been more significant than the efforts at certification of carriers under private contract. The matter has taken on particular importance in Michigan, Ohio, and California.

42. Re Smallwood (Indiana Pub. Serv. Com.), P. U. R. 1927C, 395.

43. See above "Exempted classes." North Carolina Supreme Court has recently ruled that a taxicab operating between cities but observing no schedule and taking whoever offered is not furnishing a "service," and no certificate can be required. *State v. Andrews*, 132 S. E. 568, April 7, 1926. The California commission has ruled in regard to a motor vehicle doing a trucking business from a city as a center and within a radius of seventy-five miles, that a certificate cannot be required. Re Moore, P. U. R., 1927C, 96.

44. Statutes often prescribe such exemption; see, for example, Michigan Session Laws of 1923, Public Act 209, Section 1.

45. 266 U. S. 570.

46. 70 L. Ed. 1101.

The Michigan Act of 1923 provides:

"No person, firm, or corporation shall engage or continue in the business of transporting persons or property by motor vehicle for hire upon or over the public highways of this state over fixed routes or between fixed termini, or hold themselves out to the public as being engaged in such business unless and until they shall have obtained from the Michigan Public Utilities Commission a permit so to do, which permit shall be issued in accord with the public convenience and necessity. . . ." ⁴⁷

All those so engaged are declared common carriers and subjected to whatever laws exist or shall be enacted in Michigan governing the carriage of persons or property by other common carriers.⁴⁸ The act also stipulates the requirement of liability insurance from all common carriers within the scope of the act.⁴⁹ No expression occurs mentioning operators hauling under private contract. Unmistakably the act meant to regulate what later proved to be private contract carriers.

Duke, a carrier employing forty-seven motor vehicles, was hauling automobile parts on private contract from Toledo to Detroit. Under the 1923 act, the Michigan commission directed Duke to comply with the law by securing a certificate of public convenience, and furnishing liability insurance. Duke protested that the Act (1) was contrary to the Commerce Clause of the Federal Constitution; (2) was a violation of the due process clause of the Fourteenth Amendment; and (3) it violated the constitution of Michigan in that it deals with a plurality of subjects, and fails to set forth the real purposes of the act. He secured from the United States District Court an injunction restraining the Michigan commission from enforcing the statute against him as a private motor carrier. The Utilities Commission appealed to the

47. Public Act 209, Session 1923, Sec. 1.

48. *Ibid*, Sec. 3.

49. *Ibid*, Sec. 7.

Supreme Court, which tribunal on January 12, 1925, reasoning that an act which converts property used wholly in the work of a private carrier into a public utility or changing the operator into a public carrier violates the due process clause of the Fourteenth Amendment in that it takes private property for a public use without just compensation, concluded that the act was unconstitutional and void.⁵⁰ Thus as the court pointed out, the state could not convert a private carrier into a common carrier by "legislative fiat."

The echo of the Duke Decision seems to have resounded in Ohio. Here the state supreme court ruled in the case of *Hissem v. Guran*⁵¹ that the legislature has no power to make by act the hauler of goods over the highway under private contract into a common carrier "where no service of a public character was in fact being rendered." This decision led to the 1925 amendment to the Ohio law excluding from the term "motor transportation company" those operating under private contract.⁵² One authority adds no justification for the Ohio court's interpretation of the decision in the Duke case,⁵³ and holds that what the United States Supreme Court did in that decision was to declare that a private contract carrier could not be so changed by legislative acts as to make him subject to common carrier regulation; and that it did not destroy the validity of an act requiring a certificate of the private contract carrier.

The clause quoted from the decision in *Hissem v. Guran* in the preceding paragraph assumes especial significance in the light of a more recent decision of the same court relative to private contract carriers.

The California experience in the regulation of motor carriers

50. *Michigan Public Utilities Commission v. Duke*, 266 U. S. 570. For the Court decision on the interstate phase of Duke's operations, see below.

51. 146 N. E. 808, decided March 3, 1925.

52. See also Sections 614-84 (a) of *Ohio General Code*.

53. Note 1.

operating under private contract centers around three cases, two of which reveal similar facts and a similar decision by the commission.

In *Bolton and Bennetts v. Olsen, Rouch and Williams*,⁵⁴ plaintiffs protested that the defendants were illegally transporting freight over a public highway over which the plaintiffs held certificate to operate. Williams answered that his hauling did not constitute a common carrier operation in that he was hauling under private contract for one corporation solely. But the commission ruled that under the Auto Stage and Truck Transportation Act its regulatory power extended to all those operating over public highways for hire and that the defendant must cease operating until he secured from the commission a certificate of public convenience and necessity.

Thus, California had prevented haulers under private contract from escaping the requirement of a certificate to operate.

But in 1925 perplexities increased and disappointment developed in the case of California regulation of contract carriers. The commission, with the *Williams* case as a precedent, ordered Frost Brothers, haulers of citrus fruit between Redlands and Los Angeles on private contract, to cease such operations till they should secure a certificate of public convenience and necessity. The operators contended the California regulatory act did not apply to contract carriers. The matter went to the state supreme court.⁵⁵ Points to be observed made by the court in its opinion affirming the commission order are: (1) the amendment of 1919

54. Calif. Decisions, No. 12700. Similar facts and decision of the commission in *Motor Transit Co. v. Lingo Brothers*. The provision of the Act involved reads: "Every corporation or person, their lessees, trustees, receivers, or trustees appointed by any Court whatsoever, owning, controlling, operating, or managing any automobile, jitney bus, auto truck, stage or auto stage, used in the business of transporting persons or property or as a common carrier for compensation over any public highway in this state between fixed termini or over regular routes . . ." is a transportation company subject to commission regulation under the Act.

55. *Marion L. & Wesley H. Frost v. Railroad Commission of California*. 70 Calif. Decisions, Decision 3707, October 1, 1925.

definitely reflects legislative determination to include private carriers such as the plaintiffs; (2) the state cannot by either constitutional amendment or legislative fiat transform a private carrier into a public carrier; (3) a common carrier has no vested natural right to use the highway and the rule should apply equally to a private carrier employing the highway for profit; (4) the act of 1919 in exacting a reasonable return for the privilege of using the highway is a proper exercise of the state power; (5) the regulation of private carriers is vital to the regulation of common carriers; (6) the chief purpose of regulating private carriers is to obtain adequate, regular and reliable service at reasonable cost; (7) the Auto Stage and Truck Transportation Act does not aim to regulate the use of the highways; (8) through the above act the state does offer the use of the highway for transacting private business as a special privilege "to which no one is entitled as a matter of right." The offer is conditional that the recipient dedicate his property to the quasi-public use, "or at least by submitting himself to the conditions, regulations, and restrictions specified in the Act." The court concludes that the privilege of choice remains to the private operator of ceasing operation if he does not see fit to comply with the state's conditions, and that if he does accept the privilege of using the highway for private business, he "must be deemed to have accepted the conditions of the offer."

The court in this decision seems to have determined to treat private contract carriers in full measure as if common carriers. That much could be expected of them reasonably. It points out the difference between the facts of the *Duke* case and those of the case at hand: Duke was operating under contracts made *before* the Michigan Act was passed, and such regulatory act could interfere with *existing* contract; in the *Frost* case, the carrier voluntarily entered into the contract some four years *after* the regulatory act was passed.

The case was taken on writ of error to the United States

Supreme Court. Argument was presented on April 19, 1926, the plaintiffs alleging that the California act transformed them into public carriers by legislative fiat, and the defense contending that the act had no such effect, but that its purpose was to impose upon private carriers some of "regulations so long as they desire to use the publicly built and owned highways as the chief situation of their business of hauling goods for compensation"⁵⁶ and that the private carriers are not and cannot be made into common carriers against their will.

The highest court granted that the state can forbid the use of the highways in "proper cases" but denied the state has power to force a private carrier to become a common carrier "against his will." The interpretation put on the California act by the supreme court of California, in the opinion of the United States Supreme Court, constitutes a violation of the due process clause of the Fourteenth amendment, and the unconstitutional act of the state cannot be so applied as to interfere with plaintiff's privilege of employing the highways for the performance of their contract.⁵⁷ Then as heart balm, the court adds that it is not challenging the state of California in its regulation of a carrier, "posing as a private carrier" when in reality he is substantially a common carrier.

That venerable progressive, Justice Holmes, in an able opinion dissents. He stresses the seriousness of the problem of motor carrier regulation, believes the authority to regulate as provided in the California act well within the state power, and concludes by saying "I think that the judgment should be affirmed." His dissent is concurred in by that other eminent progressive of the Supreme Bench, Justice Brandeis. Justice McReynolds in separate dissenting opinion holds that since the matter involves purely intra-state commerce, and since California has built the roads she should be upheld in checking the plaintiffs' "appropri-

56. Quoted from United States Supreme Court opinion.

57. *Frost v. Railroad Commission*, 70 L. Ed. 1101, decided June 7, 1926.

ing the highways" for their private profit, deplores the now helpless struggle in which the states are engaged in dealing with motor carriers, holds that in the present case there is no justifiable grounds for federal interference, and adds that if the California court had merely affirmed the commission decision without discussion, he supposes the court of which he is a member would not have reversed the California court.

Here we have a culmination of that doctrine of the supremacy of private property rights as over and against public welfare measured in its broader and more liberal application. Roads cost millions of dollars, paid primarily by taxation. Common carriers engaged in a public service are seriously affected by the activity of private contract carriers. Yet these matters weigh little when balanced against the property rights—the "right" to use public property for private gain under the shibboleth of private contract carrier."

As the decision of the United States Supreme Court in the *Mike* case brought grief to Michigan, whose roads were being ground down by the defendant's forty-seven trucks, greater has been the constitutional grief of California as a result of the *Frost* decision. The effect of these two decisions is to remove the private contract carrier from the realm of state certification as common carriers. Not only are private contract carriers not common carriers; they cannot be regulated as such, though for the time being at least they might put as much burden on the highways and enjoy as much profit from their operations.

The Texas act of 1927 includes within the definition of common carrier motor vehicles operated regularly in transporting passengers for hire over the highways between fixed points *whether* operated over fixed routes or otherwise."⁵⁸ The quoted phrase can be interpreted possibly to mean private contract carriers. This would run contrary to the highest decision in the *Frost* case. Must intercity motor carriers operating on irregular routes

58. Ch. 270, *General Laws* 1927, Section 1c. Italics are mine.

secure a certificate for such operation? The answer to the question is fraught with much significance to the program of regulation. If irregular carriers can avoid regulation, then only extra-legal forces can prevent their ruining the carriers which are regulated, and breaking down the whole regulatory scheme.

Eighteen states have legislated on the question of irregular service;⁵⁹ the others have kept silent. Some of those which have legislated have, in so doing, exempted them from regulation, for example, Kentucky.⁶⁰ Some few of the remaining regulate the irregular carrier, but require a type of certificate different from that which operators on regular routes must secure, for example South Carolina⁶¹ and West Virginia.⁶² Some of these eighteen seek to require of the irregular service operator the same type of certificate exacted of the carrier operating on a regular route. Ohio is an example. But in two important cases⁶³ the Ohio Supreme Court seems to have nullified the statutory effort at regulating irregular service. Missouri does not regulate irregular operators.

The states not legislating on the question of irregular opera-

59. Arizona Act of March 21, 1919, Sec. VI; California, Ch. 145, Statutes of 1925; Indiana, Sec. 5 of Act of 1925 amendatory to Public Utilities Act of 1913; Iowa, Sec. 1 of Act of April 17, 1925; Kansas, H. B. 544, effective March 23, 1925; Kentucky, Act of March 5, 1926, Secs. 1, 21, 21a; Louisiana, H. B. 523, approved July 15, 1926; Maine, Pub. Laws 1925, Ch. 167, Sec. 1; Minnesota Laws of 1925, Ch. 185, Sec. 2g; Mississippi, H. B. 125, Sec. 2g, approved March 18, 1926; New Jersey, Ch. 144 of *Laws 1925*, Sec. 2; Ohio *General Code*, Sec. 614-84c; Oklahoma, Senate Bill 341, approved March 28, 1923; Oregon, Ch. 380, Laws 1925, Sec. 1; South Carolina Act of April 8, 1925; South Dakota H. B. 118, Session 1925, Sec. 1h; Washington, Ch. 111, Laws of 1921, as amended 1923, Sec. 1d; West Virginia Motor Bus Act of 1925, Sec. 82.

60. Act of March 5, 1926, Secs. 1, 21 and 21a. Operators on casual trips are restricted to carrying on return trip only those passengers in original trip.

61. Act of April 8, 1925, Secs. 3 and 4.

62. Motorbus Act of 1925, Sec. 82.

63. *Lake Shore Electric Co. v. Pub. Utils. Com.*, 115 Ohio St. 211 (1926) and *New York Central Railroad Co. v. Pub. Utils. Com.*, 115 Ohio St. 35 (1926). These cases are discussed in *University of Cincinnati Law Review*, May, 1927, 299-303. Authorizing a detour from part of highway under construction does not take the form of a certificate nor require a public hearing. *Re Indiana Motor Bus Co.*, P. U. R. 1928D, Special Section 44.

n are to be understood as leaving this type of carrier beyond the
 pe of the regulation. But some few state commissions have con-
 ued the statute as applying regulation to carriers on irregular
 utes, notably the Illinois Commerce Commission, and the Ar-
 nsas Railroad Commission.

These considerations lead to the conclusion that for the most
 t the motor carrier operating on an irregular route need not
 present have a certificate of public convenience and necessity.

CHAPTER 6

PROCESS OF SECURING THE CERTIFICATE FOR BONA FIDE CARRIER ON EFFECTIVE DATE OF REGULATORY ACT

In recognition of vested interests already established, motor carriers in bona fide operation on the date the regulatory act becomes effective have been generally granted a certificate as a matter of right without having to prove the existence of public convenience and necessity. Thirteen states have definitely provided for such operators,¹ by statute, while the commission rules and regulations in other states have so provided.² While at least one state does not require a certificate of a bona fide operator on effective date until and unless he desires a change of schedule, a new schedule, or a change of service,³ most of these states require the bona fide carrier to secure a certificate. This can be done by affidavit showing the route over which he is operating and physical property owned, and containing a statement that he was operating in good faith on effective date. But making false statements on the affidavit has been adjudged sufficient grounds for cancellation of the certificate, even after the recipient has operated four years thereunder.⁴ Where there is no contrary evidence, the presumption that a carrier operating before effective date was operating in good faith is the controlling factor in Missouri.⁵ Where the applicant had been giving satisfactory service and was operating in a bona fide manner before effective date, the Washington commission ruled that under the statute he must receive the certificate.⁶ Bona fide operation on effective date is prima facie evidence that public convenience demands the service, said the Missouri agency

1. California, Minnesota, Indiana, Mississippi, Louisiana, Nevada, Ohio, Oregon, South Carolina, South Dakota, Texas, Washington and Iowa.

2. For example, *Rules and Regulations* of Arkansas Railroad Commission, Rule 3.

3. Oregon, Sec. 19, Ch. 380, *Laws of 1925*.

4. *Bus Transportation*, October, 1927, 597.

5. *Re Yellowway, Inc.*, P. U. R., 1928A, 217.

6. *Re Barker Bus Co.*, P. U. R., 1921E, 838-40.

September, 1927,⁷ but three months later the same authority decided that failure to accompany his application with evidence that the service he was offering before effective date was dependable and satisfactory warrants the denial of a certificate to an applicant who sought a certificate on the basis of claimed bona fide operation.⁸ The operator seeking certificate on basis of prior operation must, in Louisiana, assume the burden of proof that his operations were of the character he ascribes to them.⁹

The railroad commission of Iowa has held that it has no discretion in the matter of granting a certificate where the carrier has been operating in good faith; it must issue the certificate.¹⁰ Likewise the commissions of Indiana and Colorado have ruled that the bona fide operator is entitled to the certificate by affidavit.¹¹ In this Indiana case, it was stated that the bona fide operation claimed must be of at least ninety days standing on effective date.

The highest court in Ohio has held that a bona fide operator must secure the certificate, and cannot be legally excused therefrom.¹² Since that decision the same tribunal has ruled that the law requiring certificates of bona fide operators at effective date does not deny them equal protection of the law; nor is granting the certificate "as a matter of right" to this group while denying it thus to others a violation of the Fourteenth Amendment.¹³

The Minnesota act of 1925¹⁴ requires that bona fide operators apply for certificates, allows thirty days in which to apply for such certificates and provides that during the thirty days and until the application is heard, the operative rights cannot be

7. *Re Purple Swan Safety Coach Lines*, P. U. R., 1928A, 193.

8. *Re Midwest Transit Co.*, P. U. R., 1928C, 320.

9. *Ex Parte Dawson (La.)*, P. U. R., 1928B, 181.

10. *Re Waterloo, Cedar Falls & Northern Ry.*, P. U. R., 1923E, 424.

11. *Re Peoples Motor Coach Co. (Ind.)*, P. U. R., 1926A, 385; *Re Freshan*, P. U. R., 1928A, 106, and *Re Sandoval*, *Ibid.*

12. *McLain v. Public Utils. Co.*, 110 Ohio St. 1

13. *Cincinnati Traction Co. v. Public Utils. Com.*, 146 N. E. 84.

14. *Laws of 1925*, Ch. 185, Sec. 10.

denied. This condition suggests that the bona fide operation does not of itself guarantee the operator a certificate, for the provision that the operative rights cannot be denied until the matter is heard certainly indicates that the commission may at the hearing or as a result of it deny the certificate.

The fact that an operator has established transportation over a route when the regulatory act becomes effective does not bar the commission from ordering that operation to cease. Possessing such a privilege to operate on the effective date is no vested right at all, the California commission ruled.¹⁵ Likewise the agency declared its power to handle complaints against a carrier who had secured certificate on affidavit just as if he had secured it on basis of public convenience and necessity proved, and this declaration was upheld by the state supreme court.¹⁶

The time within which the bona fide operator may apply for the certificate "as a matter of right" is often specified in the statute. Michigan allowed thirty days from effective date of the regulatory act,¹⁷ and Minnesota permitted the same.¹⁸ An Ohio act specified May 2, 1925, as the limit,¹⁹ although the original regulatory act became effective April 28, 1923.

In Ohio, as in California, a certificate granted on affidavit is subject to modification and revocation as if granted on public convenience and necessity proved.²⁰

FOR OPERATORS ESTABLISHING SERVICE AFTER EFFECTIVE DATE

For the applicant who seeks a certificate to begin service after the regulatory act has become effective, the process is more

15. *People v. Hadley* (Dist. Ct. of Appeals), 226 Pacific 836.

16. *Motor Transit Co. v. R. R. Com.*, 209 Pacific 586.

17. Public Act 209, 1923, Sec. 1.

18. Note 10. Where misunderstanding of the Act accounted for the failure to secure certificate in time allowed bona fide operators, the Wisconsin Commission granted the bona fide certificate after the time had expired. *Re Ross*, P. U. R., 1928C, 237.

19. *General Code*, Secs. 614-87.

20. *Scheible v. Hogan* (O. Sup. Ct.), 148 N. E. 481, June 9, 1925.

difficult than in the case of the carrier seeking certificate on the basis of prior operation. Not only is it more difficult to secure the certificate, but also the process is more formal. Three phases of this formal process must be considered.

First, making application for the certificate. This is done on blanks furnished by the commission. The practice has developed demanding much detailed information in the application. As an example, the requirements specified by the public utilities commission of Ohio can be taken:

1. Statement of location of chief office.
2. Full information on physical property to be used by applicant.
3. Information as to proposed route, with number of miles in each town and county.
4. Time schedule and schedule of rates and charges.
5. A map showing the proposed route.
6. "Copy of partnership agreement" if more than one person is interested, and not incorporated.
7. Names and addresses of those furnishing transportation by rail, motor vehicle or boat-line between any two points on or along any part of the proposed route.
8. Full statement of applicant's reasons why he thinks commission should grant him a certificate.
9. Any other information which might aid commission in deciding the case.²¹

The requirements in New York are substantially as above, but in addition they call for the certificate of incorporation (if applicant is a corporation).²²

21. *Rules and Regulations*, Rule 5.

Misstatement or falsifying an application will cause application to be denied; see *Re Fazzone* (Pa. P. S. Com), P. U. R., 1922C, 539; that such will cause a certificate to be cancelled even four years after granted, see note 4. Requirement of map showing proposed route must be met by even applicant for irregular route, ruled the Ohio Supreme Court in *Erie Ry. v. Pub. Utils. Com.*, 157 N. E. 382.

22. New York Public Service Commission, *Rules of Practice*, 10.

The Vermont commission has ruled that an application which does not indicate (1) the amount of service existing on the proposed route; (2) evidence of public demand for additional service (3) and evidence that public welfare would be benefited by the additional service, should be denied.²³ In Massachusetts an application containing no description of the proposed route has been denied.²⁴

Several states require a filing fee with the application. California²⁵ and Minnesota,²⁶ each specifies \$50 as the amount, South Dakota requires only \$10,²⁷ and Iowa, \$25.²⁸

A few state, notably New York²⁹ and New Jersey,³⁰ require that the applicant file with his application evidence of consent of municipalities through which proposed route passes. Massachusetts demands that the application before it be filed with the commission be approved by the state highway division.³¹ If a railway is applying for a certificate to operate motor vehicles as public carriers, the commission must approve also the railway's engaging in the motor carrier service.³² The requirement of New York and New Jersey merely reflects the traditional seaboard regard for local sentiment; the Massachusetts provision bespeaks the advisability of professional opinion as to further use of the highway by motor carriers.

The second step is serving notice of the approaching hearing on the application. On this question eleven states have legislated; in others the commission provides by rules and regulations for serving notice. North Carolina and Ohio require the applicant to serve notice; California provides that the commission shall serve

23. Re James, P. U. R., 1923E, 857.

24. Re N. Y., N. H. & H. Ry. Co. (Mass.), P. U. R., 1926B, 339.

25. Auto Stage & Truck Transportation Act, Sec. 5.

26. *Laws of Minnesota 1925*, Ch. 185, Sec. 15.

27. House Bill 118, Sess. 1925, Sec. 110.

28. Board of R. R. Com'srs., *Rules and Regulations*, Rule 6.

29. Ch. 762, approved May 4, 1926, Sec. 66.

30. Ch. 144, *Laws of 1926*, Sec. 2.

31. Senate Bill 357, approved 1925, Sec. 48a.

32. Re N. Y., N. H. & H. Ry. Co. (Mass. Dept. of Public Utils.), P. U. R., 1926B, 341.

the notice at the expense of the applicant. The usual practice seems to be for the commission to serve the notice. The means by which notice is served includes the mail (in a few instances only), personal notice (in one state), and the newspaper. Sometimes the notice must be published in a paper in the chief towns through which the route would run; again, in a paper in the capital of every county concerned; or in a paper of general circulation. Arizona requires publication to run for at least three days before hearing; Missouri, ten days; Ohio specifies a minimum of three weeks. The practice tends to make ten days the standard period of publication of notice.³³

The notice in some states is to be served on the applicant, or an applicant and other carriers operating in the community concerned, or through the towns along the proposed route; a few require the notice to be served on competitors only. The notice may be served on all parties in interest.³⁴

33. Failure to notify electric line of approaching hearing on application to establish competing motor service has served to void the certificate granted by New York Commission. See 217 N. Y. Sup. 614.

Since the requirements are specified in the statute, the Arizona Commission has no discretion as to notice. *Re Dair*, P. U. R., 1927E, 463.

34. On the question of notice as herein presented, see *Arizona Session Laws 1919*, Ch. 130, Sec. IIIc; Connecticut, Public Motor Vehicle Act of 1921, Sec. 3; Iowa Act of April 17, 1925, Sec. 7; Minnesota, Ch. 185, *Laws of 1925*, Sec. 6; Mississippi, Act of March 18, 1926, Sec. 7; North Carolina Bus Regulation Law, 1925, Sec. 3; North Dakota, H. B. 155, *Laws of 1925*, Sec. 6; Ohio, *General Code*, Sec. 614-91, and Public Utilities Com. *Rules and Regulations*, Rule 6; Oregon, *Laws of 1925*, Ch. 380, Sec. 6c; South Dakota, H. B. 118, Session of 1925, Sec. 10; Vermont, Act No. 74, *Acts of 1925*, Sec. 1. Also the Rules of Procedure for Public Utilities Commission of Colorado, Rule VIII; for New York Public Service Commission, Rule III; and for Railroad Commission of California, Rule X. The Ohio requirement that publication must be given "once a week for three weeks" means that a hearing cannot be held in less than 21 days after date of first publication. This is the principle to be observed. But where a hearing was held only twenty days after application was filed, and no elements were lacking which more time would have produced, the commission action was held valid by the state supreme court. See Note 9.

The Ohio Code does not require notice to existing operators on application for an irregular route. *Erie Ry. Co. v. Pub. Utils. Com.* (O. Sup. Ct.), 157 N. E. 382.

In Wisconsin, notice of proposed extension of service must state clearly the sections of highway involved. *Re Ross*, P. U. R., 1928C, 238.

The third step is the hearing on the application. The minimum time which must elapse between the filing of the application and the hearing thereon varies. North Carolina permits the hearing at the end of five days, while Minnesota, Mississippi and South Dakota require twenty days. Ten days is the most usual period. Oregon leaves the question to the discretion of the commission. These requirements aim to prevent "snap" proceedings in the consideration of applications. Whether five days, ten or twenty, or even more, should be allowed depends on local conditions, including the condition of the commission docket.

The commission fixes the date of hearing, and often the commission is empowered to investigate meantime the facts and merits of the application. This investigation may be turned over to a staff of examiners. The commission may hold hearings at the capital city or elsewhere. So great is the total work of the California commission that a branch office is maintained at Los Angeles.

At the hearings, parties in interest may appear. They may appear in person and secure witnesses. Expert investigators employed by complainant have been permitted as witnesses, although the commission acknowledged that the testimony might "tend to be incredible" because of being hired.³⁵ But in Maine the court has held that those who may legally complain of the commission decisions in cases of applications should in some way be parties to the proceedings, and in Nevada "parties in protest" does not include an operator engaged illegally.³⁶

In some instances the testimony of the applicant has been disparaged, as in California³⁷ where the commission declared that neither the applicant's information nor his "self-serving declarations" were sufficient; nor could the applicant properly offer

35. Case of Consolidated Bus Lines (N. J.), *Bus Transportation*, May, 1927, 298.

36. *Re Samoset Co.* (Sup. Ct. of Me.), 131 Atl. 693; *Virginia v. Truckee Ry.* (Nevada P. S. Com.), P. U. R., 1928C, 208.

37. *Re Gibson*, P. U. R., 1926A, 829.

hearsay. Testimony of mayors of cities along a proposed route or of an attorney for the Kiwanis or Rotary Club outweighs evidence offered by the applicant unsupported by any other witnesses, ruled the Indiana commission.³⁸

The Utah commission has laid especial emphasis on the indispensability of "positive evidence."³⁹ Letters from public officials favoring the application have been declared lacking "productive value" in Ohio.⁴⁰ In Washington letters and petitions are valuable only to the extent that they are supported by the testimony of witnesses.⁴¹ The reason given by the Ohio supreme court in the above case was that the letters could not be cross-examined, and the Indiana commission has rejected a petition signed by citizens on the ground that the same signature might appear on a petition opposing as well as on one favoring the application.⁴²

In evidencing its denial of a certificate to one applicant, the Virginia commission may merely enter an order to that effect; no other evidence of the refusal need be recorded of its disposition of the case.⁴³ The fact that the commission has refused to two other applicants to operate over a specified route is proper grounds for dismissing application from a third party where the same questions were raised and passed upon in the hearings on the first two.⁴⁴ The Colorado commission will not re-examine the circumstances of a case in which a certificate was granted or denied unless new facts have arisen.⁴⁵ In South Dakota a formerly unsuccessful applicant can get a reconsideration of his application when need for the service has developed.⁴⁶ A later rehearing was denied a former applicant by the Missouri commission partly on

38. Re Greenville Transportation Co., Decision 651-M, April 15, 1926.

39. Re Hansen, March 13, 1926, and Re Driscoll, March 18, 1926.

40. *Lykins v. Public Utilities Com.*, 115 Ohio St. 245.

41. Re Trowbridge, P. U. R., 1928A, 110.

42. Re Peoples Motor Coach Co., 34-M, 606-M, 628-M (Ind. P. S. Com.), April 21, 1926.

43. See 126 S. E. 201.

44. Re Detroit-Chicago Motor Bus Co. (Mo. Com.), P. U. R., 1928C, 103.

45. Re Greeley Transportation Co., P. U. R., 1925E, 814.

46. Re Transportation Companies, P. U. R., 1928C, 110.

the ground that the applicant had operated illegally after he had been denied the certificate.⁴⁷

DEVIATIONS FROM THE NORMAL CERTIFICATE

In eighteen states the statute specifically allows the commission specific authority to grant a certificate for the partial exercise of the privileges sought in the application, or to attach to the certificate such modifications, limitations, terms, or conditions as the commission deems warranted by public convenience and necessity. In Louisiana this discretion permits the commission to issue a certificate for only a part of the route sought, and likewise provides the Ohio⁴⁸ statute; the New York commission has no such authority.⁴⁹ In Ohio, the commission may even specify the types of equipment to be used by the recipient of the certificate. The power to authorize part of the route sought has been exercised by the Indiana commission.⁵⁰

A certificate limiting the transportation to petroleum and its products, automobile tires and accessories has been issued in California.⁵¹ Where to authorize general operation would be to injure business of a regular carrier, the Pennsylvania commission granted a certificate to serve four specified concerns.⁵² But no overlapping certificate can be granted in Ohio.⁵³ From two cases it appears that an applicant who is antagonistic to the commission can not specify the conditions on which he will furnish service. In Nevada, the unwillingness of one applicant to accept a certificate and perform its stipulations were the other applicant also granted a certificate served to deny him an opportunity to engage in motor carrier service.⁵⁴ The Montana commission has refused

47. Case in Note 44. Here the applicant (an interstate carrier) sought a certificate for intrastate business.

48. *Erie Ry. Co. v. Pub. Utils. Com.* (O. Sup. Ct.), 157 N. E. 382.

49. *Re Tostanoski*, P. U. R., 1928A, 192.

50. *Re Indianapolis St. Ry. Co.*, Decision 621-M, April 23, 1926.

51. *Re Kidd*, P. U. R., 1925C, 414.

52. *Re Guerin*, P. U. R., 1928A, 709.

53. *Cooper Bus Co. v. Pub. Utils. Com.* (O. Sup. Ct.), 158 N. E. 543.

54. P. U. R., 1922B, 462.

certificate to an applicant who would promise to furnish service so long "as the roads are good."⁵⁵

Quite frequently the commission exercises its discretion to grant a conditional certificate by specifying limitations on the service the recipient may perform. It has been held valid to restrict one operator's taking up and discharging passengers over part of the route certified while not imposing such restrictions on the other carrier on the same route.⁵⁶

An unusual departure from the normal certificate appears in Colorado. The commission may issue trial certificates for a specified period to be stated in the certificate.⁵⁷ Unless positive action is taken by the commission on a trial certificate previously granted, the certificate dies with the expiration of the period specified therein. By this means both the commission and the prospective permanent carrier are given an opportunity to determine whether motor service on a particular route is warranted. Under this plan the commission has recently issued several trial certificates for motor service in the Pike's Peak region, limiting the trial period to one year; in the summer of 1927, twenty-eight limited, conditional certificates were granted for this region.⁵⁸

To bona fide operators on January 11, 1927, the Texas commission may issue a temporary certificate limiting the carrier to exactly the same service he was offering on the above date. The commission may make this temporary certificate permanent without notice or hearing, unless protest is filed, whereupon a hearing is given, and the matter is determined by the commission.⁵⁹

The question of the "roving" certificate has been passed upon in Pennsylvania and Colorado. In the former state a certificate was granted for party or group bus service within a radius of

55. P. U. R., 1926E, 633.

56. *Motor Transport Co. v. Bd. of Pub. Utils.*, P. U. R., 1928D, 292. Decided February 21, 1928.

57. Colorado Pub. Utils. Com., *Rules and Regulations*, Rule 3.

58. P. U. R., 1927C, xiii-xiv; also P. U. R., 1928A, 765-7.

59. Ch. 270, *General Laws of 1927*, Sec. 5.

fifty miles from point of origin;⁶⁰ at-large operation anywhere the state seems to be permitted thereby. In the latter state the commission is opposed to the "roving" certificate unless it is specifically limited.⁶¹

From these considerations it appears that the commission enjoys a wide discretion in granting a normal or conditional certificate. We are to conclude also that the bona fide operator on an effective date is usually entitled to the certificate by virtue of the mere fact of prior operation, but that his certificate is subject to alteration, suspension, or revocation practically the same as if it had been issued on a basis of public convenience and necessity proved. Further, that a certificate for service to be established after effective date will be granted only after the application therefor has run the gauntlet of publication and hearing, each of these steps being surrounded by statutory safeguards.

60. Re Corson, P. U. R., 1928A, 111.

61. Re Maxday, P. U. R., 1928B, 679.

CHAPTER 7

FACTORS IN GRANTING CERTIFICATES*

Many and varied are the factors affecting the granting of certificates to establish motor carrier service. In a general sense the only factor involved is public convenience and necessity and on this ground, as was expressed in the *Washington Railway and Electric* case,¹ there is an accepted standard among commissions in allowing certificates when public convenience and necessity justifies.

Before taking up the question of what factors determine the granting of certificates of "public convenience and necessity," let us consider the meaning of the phrase, whether it is to be construed as a unit, and whether qualified or absolute public convenience and necessity must exist. Here we have a phrase which lends itself to vagueness, obscurity, indefiniteness and uncertainty. While it has been current not so long or widely as "police power," "due process" or "equal protection," it has proved itself no less mystic, exact or tangible.

What is the meaning of *public*, the first word of the phrase? The Colorado supreme court interpreted it to mean "not all the people all the time," but said that a service affecting a sufficient part of the public as is affected by any other service known as public is to be dealt with as a public service.²

Thus a standard of comparing the unknown quality with the known quality determines the recognizable quality of the unknown. This definition of what is public may serve in practical situations; however, the risk of great error arises in choosing that with which the comparison is to be made, and especially so in deciding upon the degree of similarity which must exist before the satisfactory resemblance can be established. A broader and more

*This chapter has been accepted for publication by the Indiana Law Journal.

1. P. U. R., 1922C, 757.

2. Davis v. Colorado, 247 Pacific 801.

inclusive meaning was given by the Oklahoma supreme court "Public pertains to the people of a nation, state or community at large, the general body, indefinitely, or as a whole or entirety."

The Oklahoma interpretation is as comprehensive as the Colorado is involved. Neither is precise; both are inexact. These decisions can be taken as illustrative of the impossibility of prescribing definite limits to the term *public*; they show also the inevitability of having to determine each case as it arises. Sometimes there is a tendency to interpret the term narrowly, even in a particular case, it having been declared that the wish of the applicant is not equivalent to the wish of the public, does not amount to public convenience and necessity, and therefore does not constitute sufficient grounds for granting a certificate.⁴

Likewise, a good deal of doubt has arisen as to the meaning of "convenience and necessity." "Convenient" is not "handy," nor does it mean easily accessible, said the Rhode Island supreme court,⁵ though "ease and access may enter into" convenience. A service is convenient when it is "necessary for public accommodation." It was here held that a commission in granting a certificate must be convinced that the proposed service will accommodate the public and that a reasonable public demand exists. The same case exhibits the view of the court that "necessity" does not mean absolutely indispensable, but reasonably indispensable. This interpretation is much in accord with that expressed in the *Rock Island* case, where "necessity" did not mean "essential or absolutely indispensable," but the resulting condition where the proposed service would be such an improvement in the existing mode of transportation as to justify the expense of making the improvement.⁶

Is the expression "convenience and necessity" to be construed

3. *Chicago Rock Island & Pacific Ry. v. Oklahoma*, decided Sept. 14, 1926, and reported in *N. A. R. & U. Com. Bulletin* 73, 1926.

4. *Pacific States Express (Calif.)*, P. U. R., 1922D, 302.

5. *Abbott v. Pub. Utils. Com.*, 136 Atl. 490; See *Bus Age*, May, 1927, 34.

6. Note 3.

is a unit or are the two words to be construed separately? An early opinion in the matter was rendered by the New York public service commission to the effect that the phrase as used in the statute is not to be divided; that "if an enterprise is necessary, it is certainly convenient, so that if it be required that a general necessity be established, the word convenience would be superfluous." "Convenience is connected with the word 'necessity' not as an additional requirement, but to modify what otherwise might be taken as the significance of necessity." The commission parallels the interpretation of "convenience and necessity" to Marshall's interpretation of "necessary and proper" in the *McCulloch* case, stating that to analyze each word separately and give a separate meaning to each would be a marked departure from the ordinary process of the human mind. Six years later this commission reiterated its former view that the words must be considered as an entity and not separately.⁷ The New York interpretation has been accepted in Colorado, Kentucky, Missouri, and Montana.⁸ In 1926 the Oklahoma supreme court leaned heavily towards the New York view,⁹ which found acceptance by the Utah commission in 1927.¹⁰ This agency admitted that while public convenience would be served by granting the certificate sought, public necessity did not so demand, and accordingly denied the certificate.

The evident conclusion therefore is that the phrase "convenience and necessity" must be taken together, and that the words are not to be construed separately. Also that both convenience

7. *Re Troy Auto Car Co.*, P. U. R., 1917A, 700, 706, 707.

8. *Re Aldrich*, P. U. R., 1923A, 392-4.

9. *Re Overland Motor Express Co.* (Colo.), P. U. R., 1920B, 555; *Red Star Transportation Co. v. Red Dot Coach Lines* (Ky. Ct. of App.), 295 W. 419; *Billings-Sheridan Bus Line* (Mont.), P. U. R., 1928B, 816; *McCartney* (Mo.), P. U. R., 1928C, 182. Although the Kentucky statute phraseology is "convenience or necessity" (*italics mine*), the court in the above case held that the meaning is "convenience and necessity."

10. Note 3.

11. *Re Sumner*, P. U. R., 1927C₂, xiii.

and necessity must exist from the standpoint of the public before the issuance of the certificate is warranted.

Is the convenience and necessity provided for in the statute interpreted by the commissions to mean absolute or qualified convenience and necessity? The New York commission in 1911 dealt with this question.¹² Here the view was taken that public convenience and necessity exists "when the proposed facility will meet a reasonable want of the public, and supply a need, not met by existing facilities while in some sense sufficient do not adequately supply that need." The Colorado commission has had extensive experience on this point. In 1920 it was decided that as the applicant who had secured the first certificate to operate a motor truck line between Denver and Boulder had not been required to prove the existence of absolute necessity, the applicant for a second and competing certificate was entitled to receive it on establishing reasonable necessity.¹³ Although there were two railways and one motor truck line doing freight and express business between the two points, the commission granted a certificate for a second truck line, witnesses for applicant testifying that such would improve the service. Not indispensability to public demand, but only a reasonable need is required to justify the increasing of public convenience, ruled this commission in 1921.¹⁴ Two years later the commission stated that the needs justifying the issue of a certificate are not required to be an absolute demand from the public, but only such as will be reasonably convenient to the public.¹⁵ In a further case, it was likewise held that reasonable convenience and necessity is sufficient, but reasonable convenience and necessity of the public in general, and not of any particular locality; such is the contemplation of the Colorado statute.

12. Note 7.

13. Note 9.

14. *Re Donovan* (Colorado), P. U. R., 1921D, 493.

15. *Re Carver*, P. U. R., 1923B, 242.

16. *Re Paradox Land and Transport Co.*, P. U. R., 1923E, 759. Likewise Missouri.

necessity" can be read to mean only "reasonably indispensable," declared the Oklahoma supreme court in the *Rock Island* case.¹⁷ In the light of administrative practice "convenience and necessity" has been interpreted to possess a qualified meaning only. The statutes, it is safe to conclude, meant to require no absolute necessity and convenience; and had they aimed otherwise, it would be difficult to see how they could be applied in practice. We now turn to a consideration of the factors which determine the existence of public convenience and necessity justifying the granting of a motor carrier certificate.

1. ABSENCE OF TRANSPORTATION FACILITIES

In the Middle and Far West has appeared emphatically the absence of transportation facilities as a factor in determining the granting of certificates. As might be expected, this condition serves as an evident justification for authorizing motor carrier service.

The fact that one community has become accustomed to the advantages of motor carrier service suffices as proper basis for granting a certificate to serve a nearby community hitherto without service, although in so doing the commission will be creating competition with another operator on part of the proposed route.¹⁸ The absence of transportation service for a community newly set up, public convenience and necessity justifies the authorization of service by motor carrier, ruled the Colorado commission,¹⁹ and the same body has declared that where railway service has been abandoned between two towns, the daily average of mail, freight, and express being 600 pounds and a monthly average of 10,000 pounds, passengers, convenience and necessity demanded the authorization of motor carrier operation.²⁰

17. Note 3.

18. Re Shepard (Ind. P. S. Com.), 590-M, Feb. 5, 1926.

19. Re Denver & South Platte Transportation Co., Decision 976, May 7, 1925.

20. Re Heck (Colorado P. U. Com.), Decision 986, May 13, 1925.

Furnishing cross-country service and supplying connections to railways are adequate grounds for issuing a certificate in South Dakota.²¹ Here not urban, but rural needs are recognized. Similarly, in the same state the absence of other transportation facilities for inland towns makes them dependent on motor carrier service, and a certificate will issue.²² The South Dakota Commission has further concluded that where the railway distance is 70 miles, reaching the point by a proposed bus route of 120 miles is easily within the meaning of public convenience and necessity.

The importance of motor service to communities not served by rail lines has been pointed out by an assistant Secretary of Commerce,²⁴ who states that 45,000 such communities have been put into touch with rail transportation by means of the motor carrier.

2. ADEQUACY OF SERVICE

Commissions often take the existing means of transportation as the index;²⁵ Ohio furnishes an excellent example in *Eager Public Utilities Commission*.²⁶ In 1925 several states, chiefly in the northeast, enacted statutes authorizing railroads to engage in the motor carrier business.²⁷ Adequacy and frequency of service have been emphasized by the Illinois supreme court in *Egyptian Transportation Co. v. L. & N. Ry.*²⁸ Demands and requests from the public generally that transportation service

21. Re Heaton, Order 878, June 9, 1926.

22. Re Linden, P. U. R., 1926D, 782.

23. Re Buffalo Motor Co., P. U. R., 1927C, 398-400. Where certificate of operator who gave inadequate service had been canceled, an application whose petition was endorsed by such bodies as chambers of commerce along the route secured the certificate. *Ex Parte Vincent* (La. P. S. Comm. P. U. R., 1928C, 180).

24. J. Walter Drake, cited by A. J. Brosseau in address before Bureau of Motor Vehicle Division, Philadelphia, June 15, 1927.

25. Lilienthal and Rosenbaum in *Journal of Land and Public Utilities Economics*, July, 1926. The Missouri Commission stressed this point in December, 1927. *Re Midwest Transit Co.*, P. U. R., 1928C, 319.

26. 149 N. E. 865.

27. Note 25.

28. 152 N. E. 510; 321 Ill. 580.

urnished by applicant, and the inability of existing agencies to supply necessary service or that these agencies do not supply it in Pennsylvania satisfactory evidence that public convenience and necessity exists.²⁹ "Sustained and growing partonage" suffices in Indiana.³⁰ Inconvenience to the public resulting from the lack of the proposed service is a proper standard of measurement in Oklahoma.³¹ The development of bus transportation to large proportions in a short time is distinct and ample evidence that public convenience and necessity demands motor transportation, the Missouri commission ruled recently.³² A county ordinance seeking to bar motor service from the county is satisfactory evidence of the need for such service, it has been held in California. Positive, affirmative testimony is essential to the establishing of public convenience and necessity in Arizona,³³ and while the testimony of county commissioners in Colorado is weighty, it is not determinative in establishing public need.³⁴

The Indiana commission has denied a certificate where applicant failed to have representatives of the towns on proposed route produce evidence that public convenience and necessity demanded motor service.³⁵ But where only a petition signed by inhabitants along a proposed route merely stated that public convenience and necessity would be served and averred no inadequacy of existing service, the certificate was denied in Montana.³⁶ An applicant in Missouri has secured a certificate in the absence of evidence convincing the commission that the other applicant

29. *Re Eckroth (Pa.)*, P. U. R., 1926A, 358.

30. *Re Hiner's Red Ball Lines, Inc.*, P. U. R., 1926A, 133-4.

31. Note 3. Because the manufacture of explosives is an economic benefit to a community, Arizona has granted a certificate to haul them. *Re Apache Truck Line*, P. U. R., 1923A, 220.

32. *Re Purple Swan Safety Coach Line*, P. U. R., 1928A, 200.

33. *Jerome-Union Stage Line*, P. U. R., 1922E, 850. Same year California pressed indispensability of clear evidence on adequacy of existing service, P. U. R., 1922D, 495.

34. *Re Townsend*, P. U. R., 1928A, 175.

35. *Re Frurip Bros. Bus Line*, P. U. R., 1927C, 398.

36. *Billings-Sheridan Bus Line (Mont.)*, P. U. R., 1928B, 816.

would furnish better service.³⁷ The fact that the commission records show that service previously authorized on the route had proved a failure, and the failure of the evidence offered in the application at hand to show sufficiently improved conditions warranted the denial of the certificate in Washington.³⁸

Many considerations have been ruled out as insufficient factors. An occasional request to establish service or an opinion that such would be justified will not suffice in Pennsylvania.³⁹ Nor will simply stating in application that public convenience warranted without supporting facts in Colorado⁴⁰ or Arizona.⁴¹ Merely stating that present service is inadequate cannot be considered as proper evidence in Arizona,⁴² and the same view was expressed in Colorado.⁴³ The business realized the first day or week is not a sufficient basis to determine the granting of a certificate in Indiana.

Testimony offered by witnesses at hearings will not be considered sufficient in Ohio,⁴⁵ and in Illinois the ability of a railway to furnish the service which is needed precludes the granting of a certificate to a non-rail carrier.⁴⁶ And the testimony of two passengers who rode in a particular vehicle that public convenience and necessity demanded the operation of factory-built cars in the motor service was deemed invalid by the California commission on the ground, it seems, that these witnesses were not acquainted with regular stage equipment.⁴⁷

Does the element of futurity enter into determining whether public convenience and necessity shall warrant a certificate? At least one statute has recognized this element in providing for the

37. *Re Packard*, P. U. R., 1928C, 189. Decided February 29, 1928.

38. *Re Olympia-Tacoma Auto Freight Line*, P. U. R., 1928C, 117.

39. Note 29.

40. *Re Walker* (Col. P. S. Com.), decided December 2, 1926.

41. Note 33.

42. Note 33.

43. Note 40.

44. Note 30.

45. Note 26.

46. Note 28.

47. *Re Hempstead*, 1922D, 489.

suance of certificates which will take care of future needs.⁴⁸ This provision in anticipating future needs marks itself as decidedly progressive.

A few of the commission decisions reveal a recognition of the element of futurity. In California, a certificate has been denied where the applicant failed to show among other things merely the inadequacy of existing facilities to take care of *more than present traffic*.⁴⁹ Arizona⁵⁰ has recognized futurity and Wyoming has emphasized it.⁵¹

In Indiana, a thinly populated area bordering on a highway does not constitute necessity for motor carrier service, although there are prospects for building up some of the communities in the area. Perhaps the strongest emphasis has been put on futurity by the authorities in Washington.⁵² To decide whether a certificate shall be granted or not the commission of that state has authority to look to the future as well as to the present. Such is not unfair or arbitrary action, the state supreme court has held, because the motor carrier offers a service which the rail carrier cannot furnish. The recent Missouri act authorizes the certificate on basis of either present or future needs.

It is significant that the weight of evidence in favor of recognizing the element of futurity comes from the Far West, areas in which the transportation systems are not so fixedly developed, and areas which consequently look to the further needs and means of transportation.

48. Utah Public Utilities Act of 1917, as amended 1919, Sec. 4818.

49. Note 47. *Italics* are mine.

50. *Re Phoenix Motor Coach*, P. U. R., 1925E, 344.

51. *Salt Creek Transportation Co. v. Apgar*, P. U. R., 1926A, 120.

52. For Indiana case, see *Re Gary Ry. Co.* (Ind.), Decision 587-M, May 1926. For the Washington view of futurity as an element in public convenience and necessity, see *Northern Pacific Ry. Co. v. Dept. of Public Works* (Washington Sup. Ct.), 256 Pacific 333, decided May 31, 1927.

3. INADEQUACY OF EXISTING SERVICE

Frequently the statutes direct or authorize the commission to grant certificates only when existing service is inadequate. Inadequacy of existing transportation service as grounds for a certificate has been passed upon in sixteen states.⁵³ Thirty-three cases have been decided, in fourteen of which the certificate has been issued; it has been denied in nineteen. For purpose of considering the transportation agencies involved, these cases can be divided into several classes.

In the first class we have the applicant seeking a certificate to operate motor service in competition with a rail carrier. A railroad schedule so designed as not even to encourage short hauls between intermediate small towns entitled the applicant to a motor carrier certificate to serve those towns, ruled the Illinois commission.⁵⁴ The commission here contrasted the frequency of proposed service to the infrequency of existing rail service.

The failure of a railroad to operate efficiently the facilities it has is proper grounds for granting a motor carrier a competitive certificate, especially where the motor service will be practically equivalent to express service.⁵⁵ Railway service of only two trains a day warrants authorizing motor service, which however must not interfere with traffic of the railway in those areas which are properly served.⁵⁶ Time saved by eliminating rehandling of goods, and the failure of the rail carrier to furnish adequate refrigeration and heated-car facilities were adjudged valid grounds for granting a competitive motor carrier certificate in South Dakota.⁵⁷

53. For example, Ohio *General Code*, 614-87; Kentucky Act of March 5, 1926, Sec. 3; Indiana, Moorhead Bus Act of 1925, Sec. 2; Minnesota *Laws of 1925*, Ch. 185, Sec. 8; and Texas, *Laws of 1927*, Ch. 270, Sec. 7.

54. Arizona, California, Colorado, Illinois, Indiana, Missouri, Montana, New Hampshire, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, and Utah.

55. Re Cannon Ball Coach Line, Decision 14589, December 8, 1926.

56. Re Rex (Calif.), P. U. R., 1920B, 675.

57. Re Gaiser (N. Y.), P. U. R., 1920B, 246.

58. Re Gray, P. U. R., 1928B, 659.

Discontinuance of service by an interurban electric line properly results in granting a certificate to a motor carrier, although he will compete with a railroad.⁵⁹

A railway in discontinuing some of its trains creates thereby a condition warranting motor carrier service in competition therewith, concluded the Indiana commission.⁶⁰

Proof that trucks and passenger vehicles can furnish adequate service more economically than can the railway has constituted sufficient reason to authorize motor service in New Hampshire.⁶¹

In this decision, it seemed that the commission looked upon the adequacy and cost of service to be furnished as the measure of the extent to which such service will be authorized.

The Ohio supreme court has taken the ground that under the statute the commission must allow existing utilities the opportunity to make adequate the inadequate existing service, and only when they cannot or do not, may the commission grant a certificate to someone else.⁶² Here the commission order allowing addition of equipment, and change in time and rate schedule was protested, but not justified by necessity and the court sustaining this protest, reversed the commission order.

But he who seeks a certificate to compete with an established transportation agency assumes the burden of proving the inadequacy of existing service, ruled the Oklahoma supreme court in 1926,⁶³ and the same view was stressed by the Ohio commission early in 1927.⁶⁴

What constitutes adequate service? In Pennsylvania, an electric line offering a ten-minute schedule from 5:50 A. M. to 3:30 P. M., with slightly greater intervals thereafter, was ad-

59. *Re Gold Star Line* (Ill.), decided March 9, 1927.

60. *Re Indiana Motor Transport Co.*, 653-M, April 9, 1926.

61. *Boston & Maine Transportation Co.* (N. H.), Order 1719, July 30, 1925.

62. *Sciota Valley Railway & Power Co. v. Public Utilities Com.*, 154 E. 320; P. U. R. 1927C, 186.

63. Note 3.

64. *Salisbury Transportation Co.*, P. U. R., 1927C, 611.

judged furnishing an adequate service;⁶⁶ and a railway schedule of six trains daily has been considered ample service in Montana. But where there were eighteen trains daily each way, the New York commission has authorized bus service, the applicant admitting that train service was adequate *for those who wanted to use it.*⁶⁷

The satisfaction of shippers⁶⁸ with existing railway service and the inability to maintain the present sufficient train service were motor carrier operation authorized,⁶⁹ are considered indices to adequate service in North Dakota and Rhode Island respectively.

Secondly, we have the applicant seeking a certificate to compete with both railroad and existing motor carriers. The California experience furnishes an illustration. Where three stage lines and a railway were operating between Oceanside and Los Angeles, the commission refused a certificate to one Hoxie who held a contract for carrying the mail, concluding that convenience and necessity did not demand the establishing of a passenger and baggage service in connection with mail transportation.⁷⁰

Iowa has refused a certificate to operate motor carrier service because to do so would interfere indirectly with rail carrier and motor carrier. Proposed route would not be directly competitive with either carrier, but inasmuch as the applicant would lessen the business of the established carriers his application was denied.

In class three is placed the railway seeking a certificate to operate motor service. Insufficient facilities for transporting passengers between Normal and Bloomington, and the desire for

65. Southern Pennsylvania Traction Co. v. Hartel, P. U. R., 1917A, 630.

66. Re Bennett, P. U. R., 1927C, 595.

67. Re International Bus Corp., P. U. R., 1927A, 346. Italics are mine.

68. Re Fargo-Moorehead Trucking Co., P. U. R., 1927A, 459.

69. Re Aselton, P. U. R., 1926E, 370.

70. P. U. R., 1920B, 674. See also Colorado commission decision in Re Elliott, P. U. R., 1926A, 380, where a certificate was denied because existing service as furnished by motor carrier and train were considered adequate.

71. Re Ft. Dodge, D. M. & S. Transportation Co., P. U. R., 1926C, 19

transfers between the lines constitute convenience and necessity and justify the granting of a certificate to a street railway in Illinois.⁷² But public safety and economy in operation demand that a railway "stick to its rails" and not embark in motor carrier service, declared the New Hampshire commission.⁷³

In class four appears the applicant for motor carrier certificate to operate in competition with existent motor carrier service. Time was when his task was a relatively easy one. Recently, multiplicity of operators over the same route was particularly noticeable in states like Kentucky and Ohio. Perhaps as little difficulty existed in Indiana in regard to securing a competing certificate, as in any of the states with a motor carrier problem.

Between Indianapolis and Terre Haute two steam lines operate, and also an electric line; yet the commission has authorized two motor carrier lines between the same two cities. Competing certificates will issue in Kentucky, the burden of proof being decidedly on the applicant. Consolidation in Kentucky is rapidly imposing practical checks on granting of competing certificates.

In Illinois the statute guards against a monopoly in the motor carrier business.⁷⁴ Competing certificates will issue where it can be shown that the public will be greatly inconvenienced thereby.⁷⁵ Competing certificates will issue in Arizona if the existing utility does not furnish proper service.⁷⁶

Under the statute and the decisions it is practically impossible for an applicant to secure a competing certificate in Ohio unless the established carrier cares so little for his interests as not to

72. Illinois Power and Light Corporation (Ill. Com. Com.), Dec., 14936, May 26, 1926.

73. Re B. & M. Bus Application, N. A. R. & U. Com. *Bulletin* 65, 1926. The statute of 1925 allows street railways to enter motor service. This decision indicates a rigid interpretation, the steam road being denied a certificate.

74. Illinois Commerce Commission Law 1921, Sec. 55.

75. Re Farina's Bus Line and Transportation Co., P. U. R., 1922B, 803.

76. Re Brown, P. U. R., 1926E, 630. Similar decision in Missouri. Re Hatfield, case 5439 (Mo. P. S. Com.), Jan. 5, 1928.

keep or make the service adequate.⁷⁷ In the last two years quite a few of the states of the Northeast have enacted statutes favoring railway procuring of certificates for motor service and some of the states of the West and South have passed acts protecting existing railroads in the privilege of furnishing transportation service. Examples are Minnesota and North Dakota, both legislating in 1925, and Mississippi the same year. There seems to be a decided trend toward the Ohio stand that competing certificates shall be reduced to an absolute minimum if not eliminated altogether.⁷⁸ While these statutes aim to protect railroads primarily, to do so the commissions must also protect existing bus lines, which may be paralleling rail lines by checking the granting of competing certificates.

But whether the statutes provide for the protection of existing facilities, there appears in the commission decisions as early as 1919 a tendency to check the issuance of competing certificates. In that year the California commission refused to grant such a certificate where it was shown that the operator occasionally had to refuse service to some because of too small equipment; a period of sixty days was given the carrier in which to improve the service, and until the end of that period the request for a competing certificate was dismissed without prejudice.⁷⁹ Three years later the policy of the commission relative to competing certificates was becoming more rigid as revealed in the ruling that a certificate will not issue where the applicant fails to prove not only inadequacy of existing service but that new business will be created by the issuance of the competing certificate.⁸⁰

77. *General Code*, 614-87, and decisions in Notes 62 and 64.

78. But see the Texas Act (Ch. 270, *General Laws of 1927*, Sec. 7) denying the commission power to refuse a certificate on the ground that existing steam and electric lines are sufficient to serve the needs. Here is an interesting example of the frontier distrust of railroads.

79. *Re A. R. G. Bus Co.*, P. U. R., 1919E, 238.

80. *Re Hempstead*, P. U. R., 1922D, 490-91. A similar but less exacting ruling appears in *Re Starkey* (California). Decision 15778, Dec. 21, 1925.

Where livery and taxi service were sufficient and the proposed service for motor service would be greater, the Utah commission refused to issue the desired certificate.⁸¹ Motor carrier service and train service combined being ample, no competing certificate was issued in Colorado.⁸²

4. PROBABLE FINANCIAL EFFECT OF GRANTING CERTIFICATE

A fourth factor affecting the issuance of certificates is the financial effect which would probably result from such granting. This effect on the applicant has not been overlooked by the commissions; on the contrary, they have often sought to protect the public interest against financial loss.

In Indiana and Montana, it has been held that no certificate can be granted where applicant's traffic would be light,⁸³ and in the former state, the commission view that insufficient business to pay operating expenses and a return on investment constituted adequate grounds for denial.⁸⁴ A fair guarantee of ample business to justify establishing the service was considered an essential basis in Illinois.⁸⁵

Failure of applicant to show that new business would be created along the route was valid ground for refusal in California.⁸⁶ The same effect runs a decision in Utah where the business of the applicant would not justify the expense of furnishing liability insurance.⁸⁷ But no authorization will be given an applicant to extend his operation merely to make the line as a whole profitable, as held in the California commission.⁸⁸ Granting a certificate to com-

81. *Re Frost*, P. U. R., 1919E, 662.

82. *Re Elliott*, P. U. R., 1926A, 380.

83. *Re Gary Co. (Ind.)*, Decision 620-M; *Re Leslie J. Weir (Mont.)*, P. U. R., 1926B, 357.

84. *Re Zent*, P. U. R., 1927C, XI. Similarly in *Re Tilley (Colorado)*, P. U. R., 1928A, 184.

85. *Re Ritter*, P. U. R., 1923B, 530.

86. *Re Hempstead*, P. U. R., 1922D, 490-91.

87. *Re Marchant*, P. U. R., 1927C, 398-400.

88. *Re Palo Verde & Imperial Valley Transportation Co.*, P. U. R., 1928C, 619.

pete with existing carrier whose service is ample would be confiscatory, the traffic being insufficient to warrant two carriers. Such commission action was illegal, concluded the Illinois supreme court.⁸⁹

The effect of granting a certificate on financial interests of existent motor carriers has been up for decision in a few instances. The Utah supreme court reversed the commission in its refusal to allow a long-established operator to use more equipment so as to starve out a more recently certified competitor.⁹⁰ Thus was the commission checked in its denial of authority to the prior operator to protect its interests even at the sacrifice of its young competitor. Increased traffic resulting from rerouting of freight justified granting the applicant a competing certificate, but existing operator was to be protected in its intermediate-point business. Priority of operation justified the conditional permit, ruled the Arizona commission.⁹¹ But public needs outweigh financial interests of the established carrier, and certificates have been issued for additional service in Indiana.⁹² In California, a rate of 21.09 per cent. return on depreciated valuation, as shown by existing carrier's own accounts, was excessively high, and applicant was granted a competing certificate for tourist service.⁹³

The effect of granting a certificate on the financial status of both the existing and proposed carriers has been considered in New York. Application for competing certificate was denied where the business would mean ruin for applicant and existing carrier.⁹⁴ This view was stressed by the same agency a year later.

89. *Superior Motor Bus Co. v. Community Motor Bus Co.*, P. U. R. 1926C, 685; 150 N. E. 668. Whether existing carrier is earning a dividend is not a relevant question in Arizona. *Re Dair*, P. U. R., 1927E, 463.

90. *Gilmer v. Public Utilities Commission*, 247 Pacific 284. See *Bus Agency*, Feb., 1927, 44.

91. *Re Consolidated Stage Co.*, P. U. R., 1922A, 592.

92. *Re Shepard*, 590-M, Feb. 5, 1926. Similar decision in *Re Jensen* (S. D.), Order 994-A, June 22, 1926.

93. *Re J. A. Boyd* (Calif.), P. U. R., 1925A, 721-22.

94. *Re Gaiser*, P. U. R., 1918E, 927. Likewise *Re Lyman* (Utah), P. U. R., 1919B, 101-6.

95. *Re Blevins*, P. U. R., 1919F, 58.

Relatively little concern has been manifested by the commissions in regard to the financial effect the granting of a certificate would have on the public. Only a few instances have arisen. Service and not rates, is of prime importance to the public.

Arizona has ruled that a proposed motor service should not be admitted to a community unless it will be equal to or better than existing railway service, and cost less.⁹⁶ One of the grounds for granting a certificate to compete with a railway which had neglected to make its service adequate was the applicant's showing that he would charge no more, probably less, than the railway.⁹⁷ The same commission allowed a certificate to compete with a railway partly because the applicant's rates would be lower than those of the American Railway Express.⁹⁸ A certificate was granted in New York where the applicant would charge higher than the railway, and would require longer time for the trip, the railway station being some two miles distant, while the motor carrier practically delivered the passengers to their door.⁹⁹ But Utah has denied a motor carrier certificate where rates would be higher than those charged by livery and taxis.¹⁰⁰

5. FINANCIAL ABILITY OF APPLICANT

Financial ability of the applicant to furnish proper service is taken into account in granting a certificate. Sometimes statutes specify this factor;¹⁰¹ more often the matter enters into what the commission considers the demand of public necessity. The test of financial ability is stressed by commissions generally. Illus-

96. *Re Turner*, P. U. R., 1922B, 760. But assurance that fares will be higher is insufficient evidence on which to base a competitive certificate in Colorado. *Re Townsend*, P. U. R., 1928A, 181.

97. *Re Rex* (Calif.), P. U. R., 1920B, 675.

98. *Re Oakland San Jose Transportation Co.*, P. U. R., 1920A, 925.

99. *Re Demoney* (N. Y. P. S. Com.), P. U. R., 1920C, 402.

100. *Re Frost* (Utah), P. U. R., 1919E, 662.

101. For example, *Ohio General Code*, 614-690; *Oregon, Laws*, 1925, Ch. 10, Sec. 5.

trative cases have arisen in New York, Indiana, Illinois, Iowa, and Colorado.

In the first state the lack of sufficient funds to finance the proposed operation caused the denial of the certificate, and uncertainty of financial ability led to the same conclusion in another state.¹⁰² Financial ability of applicant showing his dependability to furnish proper service has again convinced the New York commission.¹⁰³ Reasonable requirements in Illinois include financial ability of applicant.¹⁰⁴ Financial weakness has proved an influential factor in determining an application in Indiana.¹⁰⁵ The established financial ability of a railroad has been considered a valid basis for granting a certificate to its subsidiary in Iowa,¹⁰⁶ and in other states especially of the Northeast. Failure to show financial standing sufficient to furnish dependable service was grounds for denial in Colorado.¹⁰⁷ The commission in this state has also ruled that the financial responsibility of a motor carrier subsidiary of a railroad must be guaranteed by the railroad company, and the commission incorporated into the certificate provision for revocation for failure of parent company to so guarantee.¹⁰⁸

Public convenience and necessity demands that the applicant be financially able to furnish service and the commissions are observing that demand.

102. *Re Buffalo Jitney Owners Assoc.*, P. U. R., 1923C, 645; *Re Rhoney*, P. U. R., 1923D, 623.

103. Last case in Note 102.

104. *Re Ritter (Ill.)*, P. U. R., 1923B, 530. Same factor later stressed by the commission. *Re Chicago-Joliet Transportation Co.*, P. U. R., 1928A, 107.

105. *Re Spencer-Martinsville Motor Line (Ind.)*, Decision 589-M, Jan. 22, 1926.

106. *Re Fort Dodge, D. M. & S. Transportation Co.*, P. U. R., 1926C, 27.

107. *Re Walker*, P. U. R., 1927C, 396, Dec. 7, 1926.

108. *Re Denver & Interurban Motor Co. (Colorado)*, Dec., 1338, June 24, 1927.

6. POPULAR PREFERENCE FOR MOTOR SERVICE

Popular preference for motor service has proved an effective factor in commission decisions interpreting public convenience and necessity: This popular preference, which can be observed anywhere, rests upon a multifold basis.

Advantages enjoyed by motor passenger service over rail service are primarily these: (1) More flexibility and frequency of service; (2) a nearer completion of the trip; (3) deconcentration of population by easily extending to suburban, residential areas; (4) fact that the bus often goes through more attractive sections of the country and city than does the railway; (5) ability to do much to satisfy the present day craze to ride on rubber.¹⁰⁹

The evidence of the above points is so clear as to require no discussion to establish them as the basis of popular preference for passenger service. Add to these the advantages offered by the motor truck, such as pick-up loading and door delivery; and prompt and speedy service for delivering perishable products and emergency orders, and you have established the unassailable bulwark of popular preference for motor service so characteristic of the present time.

While it cannot be said that popular preference has become the chief factor actuating commissions in granting certificates, it has nevertheless proved an important one. As early as 1917 the New York commission, in a city case in which the bus had carried 70,000 passengers in fifteen months, concluded that most of those who would ride the street car were no motor carrier service offered.¹¹⁰ Greater convenience of passengers in boarding and alighting from motor vehicles than from boats, and the greater convenience afforded by near-home unloading of passengers as

109. See address of F. J. Scarr before Bus Division of A. A. A. at Philadelphia, June 15-16, 1927, *Bus Transportation*, July, 1927, 379-81.

110. Re Troy Auto Car Co., P. U. R., 1917A, 700. One commissioner, in a lengthy opinion, dissented, contending that the street railway should not be forced to submit to loss of revenue which would result from competing motor carrier.

against the railway with its station far from the center of town was accepted by the New York commission as powerful element in popular preference for motor service.¹¹¹ A petitioner's offering ample evidence that popular preference demands motor transportation proved sufficient basis for a certificate for motor service on a route already adequately served by two railways.¹¹²

Perhaps the most extreme case of popular preference is that decided in New York, September 1, 1926. A certificate was granted for motor passenger service competing with the New York Central and the Lehigh Valley, the former furnishing twelve trains daily each way and the latter six daily each way.¹¹³

Community need for sending and receiving goods the same day has justified establishing a motor truck service in Colorado.¹¹⁴

Sometimes, however, popular preference as introduced has been set aside by the commission in favor of other factors. This happened in Arizona in 1922 where the applicant based his claim on the fact that his proposed through service would eliminate the necessity of passengers getting out of one vehicle and into another at a junction point, the commission holding that passengers would both welcome and benefit by an opportunity to "stretch out" for a few minutes.¹¹⁵ Substantially the same conclusion was reached by the California commission.¹¹⁶

Early in 1927 the New York commission refused a certificate where to grant it would seriously affect revenues of the rail carrier, although there existed strong popular preference for motor service.¹¹⁷

111. *Re Gaiser*, P. U. R., 1920B, 246.

112. *Re Denver-Colorado Springs-Pueblo Motorway* (Colorado), Dec. 1963, April 21, 1926.

113. *Re International Bus Corporation*, P. U. R., 1927A, 346.

114. *Curnow Livery and Transfer Co.*, Decision 873, May 6, 1926.

115. *Re Bisbee-Tucson Stage Line*, P. U. R., 1922B, 764.

116. *Re Auto Transit Co.* Decision 16609 (Cal. R. R. Com), May 1926.

117. *Re Northport Transportation Co.*, P. U. R., 1927C, 605, March 2, 1927.

7. MISCELLANEOUS FACTORS

That experience and skill in transportation service are of particular value in determining applications is attested by rulings of several states, notably Maine,¹¹⁸ Illinois,¹¹⁹ California,¹²⁰ Colorado,¹²¹ and Iowa.¹²² In a majority of the cases in these states, railroads were involved, and the decisions protected them.

Other miscellaneous factors influencing decisions on applications for certificate include the residence of applicant beyond boundaries of the state in which he seeks authority to operate, congestion of traffic on thoroughfares, and social and educational benefits resulting.

Indiana has refused a certificate to one Howard, a citizen of Kentucky, on the grounds that the statute¹²³ limited the issuance of licenses and permits for public utilities to "corporations organized under the laws of Indiana or to a citizen of such state." In the same state the fact that a highway is already heavily congested served as basis for denial of certificate to operate in a newly settled region along the way. Here public necessity enters in both a negative and a positive sense.¹²⁴ But Arizona has cast aside the congestion of traffic on a city street as insufficient grounds for denial of certificate,¹²⁵ and Massachusetts has reached the same conclusion.¹²⁶

118. *Re Maine Motor Coaches* (Me. P. U. Com.), P. U. R., 1926B, 561.
 119. *Chicago, North Shore & Milwaukee R. Co.* (Ill.), P. U. R., 1923C, 9, 1926.
 120. *Re Ritter*, P. U. R., 1923B, 530; *East St. Louis & S. R. Co.*, decided P. U. R., 1926.

121. *Re Balish*, P. U. R., 1928E, 136.

122. *Re Wood* (Colorado), *Ibid.*

123. *Re Fort Dodge, D. M. & Southern Transportation Co.*, P. U. R., 1926C, 27.

124. *Re Howard*, P. U. R., 1926D, 365. Rhode Island has a provision similar to that in Indiana. R. I. *Laws*, Ch. 221, Sess. 1922, Sec. 3. Rhode Island requires U. S. citizenship. *Re Labelle*, P. U. R., 1928A, 474. But the Indiana requirement of Indiana citizenship cannot be required of him who seeks to do interstate business. *Re Gold Seal Transit Co.*, P. U. R., 1927D, 166.

125. *Re Gary Ry. Co.* (Ind.), Dec., 587-M.

126. *Re Phoenix Motor Coach*, P. U. R., 1925E, 343.

127. *Re N. Y., N. H. & H. R. Co.*, P. U. R., 1926D, 159.

Benefits of a general social nature will result from attracting tourists to different parts of the state, and a certificate to provide the necessary transportation service has been issued in New Hampshire.¹²⁷ Circulation of news bears sufficient relation to general welfare to justify a certificate for service to deliver newspapers in Arizona.¹²⁸

Illegal operation after effective date of regulatory law has served as a factor in determining application made later by the illegal operator. In Montana it has been declared that repeated violations of the law requiring certificates are sufficient ground for denying applicant when he does apply.¹²⁹ In this case the applicant did not seek a certificate till another party had secured one for the route. Applicant before the commission testified that he had been unable to find the commission inspector with whom to file application. The commission in this case frowned upon an effort to seek protection of the regulatory law which applicant had so recently flouted.

The applicant cannot secure a certificate on the plea that while he has been observing the law others have been violating it, according to the Colorado commission.¹³⁰ Nor can an illegal operator neglectful of public needs secure a certificate in the state of Washington.¹³¹

A position much to be emulated by commissions in dealing with recalcitrant illegal operators has been taken by the California commission.¹³² An illegal operator, finally before the commission, pleaded that his disregard of the commission order to cease operation was due to the advice of a fellow truckman that he (the petitioner) was not within the scope of the order. In rejecting this plea and denying a certificate to the petitioner, the commission

127. *Re B. & M. Transportation Co.*, Order 1712, July 17, 1925.

128. *Re Arizona Gazette*, P. U. R., 1922C, 677-81.

129. *Re Leslie J. Weir*, P. U. R., 1926B, 335.

130. *Re Paradox Land and Transport Co.*, P. U. R., 1924E, 579. See also *Re Reeder (Ind.)*, Decision 818-M, Feb. 3, 1928.

131. *Re Knulhman* (Wash. Dept. of P. W.), P. U. R., 1921E, 842.

132. *Re L. A. Jones*, P. U. R., 1921D, 684.

monished him in substantially these words: "It is by far better to do as the commission orders, since it is busy interpreting the law and is therefore more capable of giving advice than is a low truckman or other person with ulterior motives or interested reasons for giving erroneous advice. It ought to be common knowledge that operation without a certificate is illegal, for the law has been in operation four years, and the maxim of 'Ignorance of the law excuses no one' should be applied."

But there are sometimes mitigating circumstances. This fact was recognized by the Colorado commission in granting a certificate to an applicant who before the time he applied had begun carrying passengers during the inability of a railway to supply normal service. The railway did not object at the time the applicant began supplementing the impaired railway service, and the commission ruled that the railway protest against the granting of a certificate to make permanent the motor service so begun could not stand.¹³³ It has been decided in Montana that where discontinuance of illegally begun service will hurt shippers, the applicant must be granted a certificate.¹³⁴ Thus was recognized the prime primary consideration of public convenience and not private gain.

In case there are two or more applicants for a certificate over the same route, what factors guide the commission in making a choice? Statutes frequently specify elements to be considered by the commission in deciding to grant or refuse a certificate, but they are conspicuously silent on instructions governing selection between applicants. However, the South Dakota act of 1925 does prescribe in some detail directions for such a case.

On December 31, 1927, a commission selected the widow of a deceased certificate holder on grounds of length of time the service

¹³³. *Re Carver*, P. U. R., 1923B, 242.

¹³⁴. Montana Bd. of Railroad Commissioners, Report and Order 1450, July 21, 1926; P. U. R., 1927A, 94.

had been in operation, character of the service furnished, and amount of capital invested.¹³⁵

Some commissions have shown a marked preference for the railway applicant where two or more applicants seek the certificate for motor service over the same route. While this question of the relation between the motor carrier and the rail carrier is of tremendous practical importance,¹³⁶ it is proper to state here that the evidence accumulating in the last twelve months shows a much more definite trend than ever toward favoring the rail line.¹³⁷

Frequently priority in filing application for certificate has appeared as a factor. A widely varying attitude has been taken in different states toward this element. It has proved the determining factor in Indiana, where the certificate went to the applicant who had observed the law by not beginning operation contrary to the law.¹³⁸ Where both applicants are morally fit and financially able, the Colorado commission has awarded the certificate to him who filed first.¹³⁹ Other considerations being equal, priority in filing has secured the certificate in California,¹⁴⁰ and a similar ruling was made in Washington early in 1928.¹⁴¹ Financial ability being equal, the Colorado commission awarded the certificate to the applicant who filed first.¹⁴² In Kentucky it is primarily a matter of filing first which determines the selection between applicants, so long as each is capable of performing the stipulations

135. *Re Transportation Co.*, P. U. R., 1928C, 110.

136. See Chapter "Motor Carrier and Rail Carrier."

137. The most instructive illustration of this trend recently is to be found in California, *Re Balish*, P. U. R., 1928E, 136; *Re Pacific Electric Railway Co.*, *Ibid.*; and *Re United Stages*, P. U. R., 1928E, 137. In the last case the certificate was awarded the motor applicant. Rates figured prominently in these last two cases.

138. *Re Smallwood* (Ind. P. S. Com.). Decided August 14, 1925.

139. *Re Armentrout*, P. U. R., 1927C, XII-XIII.

140. *Re Gibson*, P. U. R., 1926A, 833.

141. *Re Krakenberger*, P. U. R., 1928C, 233.

142. *Re Armentrout*, P. U. R., 1927E, 728.

the certificate.¹⁴³ The South Dakota commission has repeatedly put emphasis on priority in filing as the determining factor.¹⁴⁴

A non-committal attitude toward priority in filing has been taken by the Nevada commission. Reliance should be put on this factor only in case of last resort, especially where the applications were filed about the same time.¹⁴⁵ Since in this case one application had been filed by letter and two by telegraph all the same day, the letter being posted before the telegrams were dispatched, the commission might have found no little technical difficulty in determining which really had priority. Later this commission rated priority in filing not higher than of secondary importance.¹⁴⁶

The trend in some sections, however, is definitely against giving priority in filing as the determining factor. Indirectly the New York commission thus inclined in 1919.¹⁴⁷ Similarly the Washington agency passed over this element, chose the second applicant in order of filing, and the state supreme court upheld this action.¹⁴⁸ In Ohio the commission is under no obligation to consider priority in filing,¹⁴⁹ and the supreme court in that state has ruled that priority in filing confers no right to secure the certificate.¹⁵⁰

Where two carriers have established service prior to the regulatory act, the priority in beginning that service has come up in deciding between the applicants for the certificate. The South Dakota statute stresses priority in establishing service;¹⁵¹ in Nevada this factor rates higher than priority in filing application for certifi-

143. See my article in *National Municipal Review*, Sept., 1927, 568-71.

144. *Re McMurray*, P. U. R., 1926D, 785; *Re Black Hills Bus Co.*, decided June 1, 1926; *Re Winner-Hot Springs Transit Co.*, same day; likewise *Re Lewis*, P. U. R., 1928A, 246.

145. *Re Morris*, P. U. R., 1922B, 461.

146. P. U. R., 1922C, 734.

147. *Re Joseph Carlucci*, P. U. R., 1919F, 704.

148. *Auto Freight case*, 214 Pacific 164.

149. *Cincinnati Law Review*, May, 1927, 311.

150. *Sohngen v. Pub. Utils. Com.*, 154 N. E. 734. See *Bus Age*, May, 1927, 34.

151. Laws of 1925, H. B. 118, Sec. 14.

cate.¹⁵² Priority in establishing service is recognized as important in New York.¹⁵³ Priority in commission investigation of the merits of the respective applications has been ruled out as a factor in California.¹⁵⁴

Thus the claim of priority as brought before the regulatory bodies has involved three different meanings, relating to filing of application, establishment of service, and commission investigation of applications.

Public convenience and public service in that more of the traffic was destined to the terminus of one applicant served as the decisive factor in Arizona.¹⁵⁵ The applicant offering service at the lower cost has been selected in Nevada,¹⁵⁶ and in the same state more ample facilities proposed and financial ability to furnish that service have secured the certificate.¹⁵⁷ Illinois also has recognized the greater financial ability of one applicant as a ground for awarding the certificate.¹⁵⁸ Cost of the service has played a part in Colorado.¹⁵⁹

Experience and skill in transporting service, even in operating a motor truck under private contract, the Utah commission admits¹⁶⁰ as valuable in deciding between applicants. Experience, skill, and business ability are powerful factors in Illinois.¹⁶¹

Character and standing of the applicants have appeared as influential factors in selecting between applicants. The fact that one applicant had observed the legal requirements relative to beginning the service was recognized as a strong point in his favor by the Indiana commission.¹⁶² Illegal operation so stamped

152. Note 145.

153. Note 147.

154. Note 140.

155. P. U. R., 1926D, 571.

156. P. U. R., 1922C, 734.

157. *Ibid.*

158. *Re Austen Brothers Transfer Co.*, P. U. R., 1923C, 222.

159. *Re King*, P. U. R., 1919F, 377.

160. *Re Russel*, P. U. R., 1927C, 400.

161. Note 158. See also P. U. R., 1928A, 107.

162. Note 138.

character of the applicant in Washington that he was denied a certificate,¹⁶³ and where the commission questioned seriously whether the applicant meant to operate the proposed service himself he was denied the certificate in Colorado.¹⁶⁴ Derogatory suggestions as to the character of the applicant cannot be considered by the Montana commission when those suggestions are handed in secretly or whispered to the commission.¹⁶⁵ Mere charges that the applicant is guilty of reckless driving and of violating the prohibition laws do not disqualify him from receiving the certificate in Missouri.¹⁶⁶ The commission ruled that court decisions evidencing the guilt of applicant are necessary to disqualify him thus. Where the applicant's manner of testifying was such as to create doubt that he would observe the law, he was denied the certificate.¹⁶⁷ The applicant preferred by the community has been selected by the Ohio commission in preference to the applicant who was antagonistic to the community.¹⁶⁸ The authority of the commission to select between applicants and an order choosing one of two applicants have been affirmed by the supreme court of Ohio.¹⁶⁹

163. Note 141.

164. *Re Hall*, P. U. R., 1928A, 655.

165. *Re Butte-Anaconda Freight Express Service*, P. U. R., 1926C, 495.

166. *Re Packard*, P. U. R., 1928C, 189.

167. *Re Davis*, Case 5479, December 19, 1927.

168. *Merryman v. Moore*, 1924, P. U. R., 49. See *Cincinnati Law Review*, May, 1927, 311.

169. *Johnson v. Pub. Utils. Com.* (O. Sup. Ct.), 157 N. E. 475.

CHAPTER 8

SAFETY, DRIVERS, AND LIABILITY PROTECTION

The essential relationship among safety regulations, requirements for drivers, and the necessity of liability protection justifies a consideration of these three phases of motor carrier regulation together.

SAFETY

According to the report of the National Safety Council for 1925 there were killed by automobiles in the United States that year 21,000 persons.¹ Of these, 14,280, or sixty-eight per cent., met death in accidents on the highway. Add to the number killed a reasonable estimate of those injured on the highway, and the evidence becomes emphatic that the motor carrier as well as the private car is surrounded by a great and constant hazard. The Federal Accident and Pedestrian Insurance Company considers riding in a motor vehicle two and a half times as hazardous as riding in a steam or electric train. The relative amount of damages it agrees to pay on its policy for death due to train and motor accidents reveals this recognition.² It would appear then that safety requirements should occupy an important place in the system of regulation applied to motor carriers.

Comprehensive safety codes seldom appear in the statutes although many statutes prescribe requirements on certain phases of safety. It is under the usual authority granted the commission to issue rules and regulations that one finds the safety codes issued.

Equipment for the common carrier vehicle has received attention from the commission as revealed in the requirements that skid chains be carried for emergency use, that red flags and flash-

1. See *Illinois Law Review*, April, 1926, note on page 813.

2. The advertisement of this company has been widely circulated in the newspapers. See, for example, *Newark (Ohio) Advocate and American Tribune*, April 4, 1927.

lights be included in the vehicle for use in signaling trains in case of accidents at crossings, and that fire extinguishers be provided. Occasionally the commission specifies that the gasoline tank be located entirely on the outside of the vehicle,³ and that emergency exit doors be provided for vehicles not loading each passenger seat from individual door. A frequent requirement calls for proper headlights and effective brakes. A speedometer in working order is often prescribed.

The loading of the vehicle is regulated by the commission in many states. Safety is particularly jeopardized by the overcrowded bus, and the regulations often limit the number of passengers to be taken at one time. This limitation may restrict the maximum load to the registered carrying capacity⁴ or to a particular percentage in excess of the carrying capacity.⁵ Passengers are frequently forbidden to ride on running boards or fenders.⁶ Montana has a prohibition on occupancy of the front seat by passengers until other seats are filled; Ohio has recently canceled such a provision in its requirements.

Occasionally one finds the transportation of dangerous articles in passenger vehicles forbidden. Rule 77 of the Ohio commission lists no fewer than forty-three prohibited articles, including such as dynamite, smokeless powder, and even matches in commercial quantities.

The speed of the motor carrier vehicle is a paramount factor in the safety of its operation. Sixteen states provide by statute that the speed be reasonable and proper and then proceed to specify the maximum limits.⁷ Because of differences in road

3. New York Public Service Commission, Case No. 2274, November 20, 1914; also Rule 23 of the Massachusetts Department of Public Utilities.

4. See Rule 14 of *Rules and Regulations* of Public Service Commission of Maryland.

5. Excess of 25 per cent. is allowed in Massachusetts; *supra*, note 3.

6. In Maryland and Ohio, for example.

7. Motor Vehicle Conference Committee Pamphlet *State Restrictions on Motor Vehicle Sizes, Weights and Speeds* is an indispensable digest on this point.

width, general topographical contour, predominance of straight-away or curves, condition of highway, degree to which community adjacent to highway is built up, congestion of traffic, and general temperament in different sections of the country, state limitations on maximum speed over open highways show much variation. Massachusetts fixes the maximum in open country at twenty miles per hour; New Hampshire and three other states specify twenty-five. Fifteen states, in all sections of the country, prescribe thirty miles as the maximum, while twenty-three states permit thirty-five. Kansas and Kentucky allow forty. Massachusetts' maximum of twenty stands in bold contrast to Nevada's legal forty-five, and to the absence of maximum limits in South Dakota and Montana. Perhaps in no other phase of regulation does the conservatism of the East stand out more clearly as against this lingering individualism and "freedom" of the frontier West. In some sections road conditions may constitute practical limits on speed.

In setting speed limits, twenty-eight states make a distinction as to whether operation is to be over urban streets, suburban thoroughfares, or open highways. Utah, Nevada, and Wyoming make no graduation according to the community through which the motor carrier is to operate. California specifies fifteen miles per hour in the business section of a municipality, twenty miles in the residential districts, and thirty-five on open highway. This closely approximates the model speed schedule, recommended by the Motor Vehicle Conference Committee: Twenty miles per hour on urban streets, twenty-five on suburban, and thirty-five elsewhere.

In some rural states, like Minnesota, Mississippi, and Wyoming, special consideration is given to rates of speed of motor carriers passing animals. The first state specifies from four to fifteen miles per hour; the second prescribes eight miles per hour as maximum in passing "school houses, churches, animals.

and pedestrians." Safe service is more important than speedy service, said the Wisconsin and Missouri commissions recently.⁸

Regulatory authorities manifest much interest in the question of stopping at railroad crossings. Some thirty states require such stopping. Several of these, New York, Rhode Island, and Utah, for example, require common carriers to stop. Some require slowing down, or stopping at rail crossings which have no gates, watchman or signals. Often the common carrier driver is enjoined to make a complete stop, and determine that the tracks are clear before driving across the tracks. Too much precaution can hardly be exacted in the matter of driving vehicles over grade crossings, as is abundantly attested by the railroad companies' safety campaign admonishing the motorist to "Cross Crossings cautiously." In resulting injuries and deaths, the "unseen" train is entitled to rate as high in destructiveness as the "unloaded" gun.

Periodic inspection of the mechanism of the motor carrier vehicle is an important factor in safety of operation. Motor carriers are learning that taking on the road a vehicle of questionable dependability is not only dangerous, but also poor advertisement for their business. Recently a bus already started on its run was directed back to the garage by a Kentucky inspector, and on examination the bus revealed no brakes at all. A delay sufficient to remedy the deficiency does not ordinarily result in abilitant or enthusiastic boosting of bus service.

Scrutinizing inspection of the mechanical parts of its 175 buses every 100 miles is considered by the Pickwick Corporation as one of the two chief reasons for its no-fatal-accident record for 1924, during which period its buses traveled more than five million bus-miles and transported a million passengers.⁹ Not many motor carriers have the facilities for such frequent and thorough inspection as that performed by Pickwick, but at least

8. Re Badger Transportation Co. (Wis.), P. U. R., 1928C, 581; Re Casham (Mo.), P. U. R., 1928B, 678, decided January 9, 1928.

9. *Motor Coach Transportation*, July, 1926, 22.

sufficient attention should be required to avoid endangering lives through operation of vehicles lacking brakes entirely. Public requirement of equipment inspection by the carrier has been enjoined directly to only a slight extent. But the frequent requirement that the equipment be subject at all times to inspection by a representative of the commission aims to stimulate the vigilance of the carrier.

DRIVERS

But safety in motor carrier operation depends primarily upon the driver. His multiplex duties as engineer, conductor, and chief representative of the carrier in dealing with the public not only make his task an arduous one, but serve to emphasize the importance of the position. It is no wonder that with the appearance of the public driver there arose in alert communities the demand for some standard of qualifications. As early as 1915 the California supreme court held as valid a municipal ordinance requiring drivers of jitneys to have had at least thirty days experience.¹⁰ This was held not unreasonable, but a valid exercise of the police power. The need for capable, strong men as drivers of public motor vehicles was recognized in Arizona in 1918.¹¹

About half the states have provided by statute for the licensing of drivers. Usually the licensing provisions are to be found, not in the motor carrier regulatory act, but in the state motor vehicle laws, and commission rules. An examination of the provisions in a dozen of these states reveals that the usual licensing officer is the secretary of state, acting either directly, through examiners, or through a motor vehicle division of his department. In Maryland the licensing authority is appointed by the governor and senate; in Massachusetts licensing heads up in the department of public works. Kentucky licenses bus drivers through the motor

10. *Ex Parte Cardinal*, 150 Pacific 348. In 1918 the Arizona Commission held that drivers be 21 years of age and experienced in the operation of motor vehicles. *Re Bohn*, P. U. R., 1918B, 292.

11. Note 10.

carrier regulatory body. Oregon requires that applicant for license to drive a public vehicle have six months experience in driving. Maryland specifies licensed instruction for one month as prerequisite to examination. Minimum age is usually eighteen or twenty-one years.

With application filed, the applicant is directed to appear for examination, either before the central agency or before an examiner appointed in the locality. Applicant may be subjected to whatever examination the central agency sees fit; it may be oral, written, or both; the applicant may be required to give a demonstration of his ability to drive a motor vehicle. Usually a medical examination is prescribed. In Vermont the examination may be waived. On receiving an attested application stating age and residence of applicant, accompanied by the fee of \$5, and letters from two reputable citizens that applicant is qualified for license, the licensing authority in Virginia "shall issue to such applicant a license and badge."

If examiner is satisfied with the applicant's showing, a license will issue, and also a badge which is to be worn by driver while on duty, under penalty not to let another wear the badge. This license is good for one year, and is renewable, usually at the same rate as the initial fee, but sometimes at less. The license is subject to suspension or revocation by the issuing authority, sometimes on hearing, sometimes merely on notice. Maryland provides for appeal to the circuit court in revocation or suspension cases.

Granted a license to operate a public motor vehicle, the driver often finds himself under a series of rules and regulations issued by the commission and governing his conduct. A leading illustration is to be found in the rules and regulations of the Ohio public utilities commission: the driver is not to use intoxicating liquor while on duty, and not to excess at any time; smoking is denied him while on duty, and he is directed to engage in no useless conversation with passengers. He must stop for passengers at designated points, and he must accept whoever offers so long

as room permits and person so offering to ride is neither in a drunken condition nor using profane language. He must not allow anyone to ride on the outside portion of the vehicle. Ohio drivers have improved much in appearance and efficiency in the last few years.

The Oklahoma and Washington regulatory bodies have prescribed maximum hours the driver may remain on duty; and this recognition of the close relationship between long hours and fatigue which may result in fatal accidents is expressed by the California commission in its ruling that no driver shall remain on continuous duty for a 500 mile trip, where there was no liability protection against accidents.¹² The work day for drivers ranges from six to nine and a half hours, and their pay from \$5.50 to \$7.50 a day.¹³

What do these requirements mean in practice? While any interested observer will have noted an improvement in the personal appearance and general calibre of drivers in the last five years, credulous indeed is he who would attribute this improvement primarily to public regulations as announced and actually administered. Particularly do provisions of this type especially depend for their effectiveness upon the enforcing agencies. From correspondence and conference with regulatory bodies and operators associations it has not once appeared that the requirements are too rigid. More than one regulatory agency favors tightening up on requirements for drivers.

In practice, the administration of the requirements takes on too much of the nature of a mere formality. Evidence of this is seen in the fact that in Ohio and Kentucky, states which are among the leaders in motor carrier regulation, approximately 99 and 90 per cent. respectively of the applications for drivers license are granted. In the latter state a one-legged man secured

12. *Motor Carriers Association v. McCormick Steamship Line*, P. U. R., 1924C, 474.

13. As revealed at the I. C. C. hearings. *Bus Age*, April, 1927, 39.

in license to drive a bus in 1926. The Washington Operators Association considers the state requirements none too rigid in content or application, and the similar body in Indiana voices the same opinion.

To the motor carriers in their individual and several capacity is due a great part of the improvement in the calibre of drivers in the last few years. Since the driver represents the company and is its salesman, the company realizes, logically enough, that good business demands well-appearing, capable men. Trained drivers reduce wear on the vehicle operated, and lessen the number and likelihood of accidents; the courteous driver gives the passenger a feeling of satisfaction which makes him a booster for the service as well as a continued patron. Public opinion expressed in appreciative and constructive as well as in destructive criticism, is being taken into account by the alert motor carrier. Drivers schools have appeared in England and the United States. The London General Omnibus Company gives accepted candidates a five or six weeks course of training designed to develop driving ability and to test out the candidate under most adverse and yet practical conditions of bus operation. No tenderfoot is turned loose with a bus. Operating 4,000 buses on 300 routes, carrying four and a quarter million passengers daily, and covering 160,000,000 bus miles annually under all kinds of traffic, street, and weather conditions, the company has experienced only one fatal accident per 1,600,000 bus miles. In no unmistakable terms are the drivers as trained in the school given their share of the credit for this remarkable safety record.¹⁴

The Northern Ohio Power and Light Company, now operating 150 buses in the Akron-Canton region, established a drivers

14. For a sketch of the methods of training employed by the "L. G. O. C.," see *Bus Age*, August, 1927, 34-36.

school in 1926. The following "Introductory Statement"¹⁵ indicates the scope of the course of training:

"In presenting this compilation covering those subjects taught in the Bus Operators School of Northern Ohio Power and Light Company, the attempt has been made to cover in a complete way each lesson of the course, together with the review work. Lectures on the various subjects upon which bus operators are given particular training are submitted as an essential part of the course.

"The course consists of three divisions—Transportation, Safety and Mechanical. Under the first heading, operating rules are submitted followed by lessons in schedules, fare collections, reports, co-operation, selling service to the public and attendant subjects. Traffic rules, selling the Company's securities and the care of passengers are made special features.

"In the matter of Accident Prevention, care is exercised in the manner of presentation, the thought being that the lectures should be tied in with accidents that actually occur. Charts form an important part of the course.

"The engine, oiling, cooling system, carburation, ignition, gasoline system, clutch, transmission, axles, brakes, tires, wheels, fenders—every part of the bus—is covered in the mechanical course. No attempt has been made in the presentation here submitted to give the talks made in the mechanical training. Much of it is technical and consists largely of explanations. The points covered, how-

15. Introductory Statement to Outline of Subjects discussed in the Bus Operators' School . . . of the Northern Ohio Power & Light Company, Akron, Ohio. Methods of training and rating drivers and the effect of the merit system as worked out by the Southland-Red Ball Motorbus Co., Austin, Texas., are treated in *Bus Transportation*, Sept., 1928, 471, *et seq.* For evidence that the driver is becoming more and more important, see a rousing editorial, "Drivers and Accidents," in *Bus Transportation*, Sept., 1928, 496-98.

ever, have been pointed out briefly in naming the subjects. Charts, drawings and actual parts of a bus are used in demonstration work to give students a clear understanding of the subjects.

"On the whole, the effort is made to cover every line of training it is felt a bus operator requires, from knowing how to drive and how to care for the complete bus to the proper method of caring for the public.

"Upon completion of the course, and resultant satisfactory grades, diplomas are presented."

The school has graduated its first class of 200. In the half year since the graduation of the first class, the company has experienced a decrease of 5.1 per cent. in bus-mile maintenance cost, a per cent. decrease in labor turnover despite the increase of its buses in operation from 88 to 150, and 32.4 per cent. decrease in road calls for help. An increase of 26.9 per cent. in number of passengers carrier per accident, and of 23 per cent. in miles operated per accident has been registered in the last half year. Efficiency on the part of the drivers and pride in their work, attributable largely to the training school, have proved a potent factor in this record.¹⁶

The realization of motor carriers that the efficiency of drivers is an all important factor in the question of safety and in growth of business is voiced by a carrier who requires five years driving experience to qualify as driver—Pickwick Corporation,¹⁷ the largest motor carrier in the United States, operating over 5,000 miles of route and having assets of more than \$5,000,000.

It seems reasonable to conclude that the days of the "rough-neck," "hardboiled," bus driver are numbered. Too many of the type yet survive, but hope for the future lies in the forces which have brought the present improvement. Only as these forces

16. E. B. Atchley, head of Public Relations Dept. N. O. P. & L. Co., in *Bus Transportation*, Oct., 1927, 573-4.

17. *Motor Coach Transportation*, July, 1926, 22.

are operative are public regulations expected to be formulated and applied.

LIABILITY PROTECTION

It requires no unusual foresight to discern that in spite of safety requirements and drivers qualifications, the motor carrier is subject to accident hazards more constant than is the rail carrier. Nor is the status of the motor carrier so favorable as that of the rail carrier in regard to the ability to pay damages arising out of the course of operation. He is just established; his safety record is not proved, his financial ability at best has not been demonstrated. Hence, it is evident that to function properly as a transportation agency, the motor carrier must offer the public liability protection not inherent in his financial status. Government agencies have been rather keen to recognize the importance of this phase of motor carrier regulation.

Municipalities early saw the need for requiring motor carriers to furnish liability protection. In 1915 the supreme court of California upheld a municipal ordinance requiring of a jitney operator using the streets an indemnity bond or insurance to the amount of \$10,000; this was held necessary for public protection. About the same time the highest court in Texas, observing the city's experience with unsatisfactory personal sureties offered by bus operators, held valid the city requirement of indemnity insurance.¹⁹ Later the court reiterated its view of the validity of the city requirement of indemnity bond.²⁰ A Tennessee statute forcing an operator of a jitney in municipalities to furnish bond to indemnify those injured in the course of operation of the vehicle was held a valid exercise of the police power.²¹ In this case the court pointed out that requiring indemnity protection of public carriers while not demanding it of private car owners was

18. *Ex Parte Cardinal*, 150 Pacific 348.

19. *Ex Parte Sullivan*, 178 S. W. 537.

20. *Auto Transit Co. v. Fort Worth* (Texas Ct. of Civil Appeals), 18 S. W. 685, Nov. 20, 1915.

21. *Memphis v. State* (Tenn. Supreme Ct.), 179 S. W. 631.

not arbitrary or class legislation. An operator of a motor coach on regular schedule and over a definite route must secure liability insurance, ruled the Arizona corporation commission in 1918.²² And the Massachusetts commission in 1919 required an indemnity bond in the amount of \$2,500 for a 5-passenger jitney in municipalities, and \$500 for each additional passenger capacity.²³

Municipal experience served well as general precedent for state regulatory policy when intercity motor service so developed as to demand regulation. By January 1, 1927, thirty-three states had provided by statute for liability protection.²⁴ In nine of these statutes the amount of protection is specified; twenty-four leave the amount to the discretion of the commission.

The form of liability protection is specified as indemnity bond in six states; eleven call for indemnity insurance, and sixteen permit either bond or insurance policy. Cash or its equivalent is satisfactory liability protection when deposited with the Montana commission; under the Utah statute, a personal surety is acceptable, but the Arkansas commission was upheld by the state supreme court in 1926 in its refusal to accept a personal surety as a form of liability protection.²⁵

The basis of determining the amount of liability is primarily the carrying capacity of the vehicle, with particular emphasis on the amount required as against injury to one person. But in determining the amount of liability protection, the vehicle as a unit often enters into consideration. For property carrying vehicles, there exists an almost uniform flat amount of \$1,000 per vehicle, whether it carries baggage, parcels or other goods along with passengers, or transports property exclusively. But in Indiana, \$2,500 property insurance is required.

The states show a remarkably wide variation in the amount of passenger liability protection required. In the New England

22. Note 9.

23. *Re Union Street Ry. Co.*, P. U. R., 1919C, 900.

24. For list of these states, see A. E. R. A. *Bulletin* 120, XIV.

25. *Hester v. Ark. Ry. Com.* (Ark. Sup. Ct.), 287 S. W. 763.

region \$500 per passenger capacity frequently appears, often with a minimum total amount specified. This amount is \$5,000 per vehicle in Connecticut and Maine. New Hampshire specifies \$500 per vehicle plus \$100 for each passenger capacity. A maximum amount per vehicle is sometimes specified, \$20,000 being popular figure.

The Alabama statute specifies not more than \$10,000 protection against injury to one person, while Louisiana provides for from \$5,000 to \$30,000 per vehicle, according to carrying capacity.

In a large group of states there is striking uniformity in that the accepted amount of protection against injury to any one person is \$5,000; many in this group limit to \$10,000 the total protection required against injuries suffered by any or all passengers resulting from any one accident. But in some states the amount of protection against all injuries resulting from any one accident ranges far above the \$10,000 mark, Montana demanding \$20,000; Louisiana, \$30,000. Iowa, looking to great development of motor transportation, specifies that a 46 passenger vehicle shall furnish as protection against injuries growing out of any one accident protection in the amount of \$50,000.²⁶ The Kansas commission has exercised freely its discretion in fixing the amount of protection on a 20-passenger vehicle against injuries resulting from any one accident at \$60,000.²⁷

In 1925 the Nebraska railway commission ruled that public safety demands liability protection from motor carriers since "most of the carriers are individuals or partnerships, some of which have no property other than their equity in their cars."²⁸ But the amount of protection required was recognized on June 30, 1927, as inadequate and on that date the commission adopted

26. Railroad Com. of Iowa, *Rules and Regulations*, Rule 7. The wording of the statute relative to bonds must be observed, the Iowa supreme court has said. *Curtis v. Michollson*, 219 N. W. 49.

27. Public Service Commission of Kansas, *Rules and Regulations*, Rule 19.

28. *Re Common Carrier Bus Lines*, P. U. R., 1925A, 442.

schedule requiring of vehicles of 30-capacity and greater liability protection against injuries which might result from one accident in the amount of \$80,000.²⁹

The usual statutory provision is that the certificate to operate depends on securing the liability protection specified; and the statutes are particularly insistent that the protection be kept in full force and effect. Failure to do so subjects the certificate to revocation. The commission must be notified in advance of intention to permit to lapse, or to modify, substitute, or cancel liability protection. Ten days advance notice is usually specified. A few of the states requiring liability protection of motor carriers, notably Pennsylvania³⁰ and Kentucky, permit the commission to waive the protection requirement if the carrier can furnish the commission satisfactory evidence that he is able to pay the damages which may be assessed against him. The fact that liability insurance on the average 24-passenger vehicle in Kentucky costs the carrier above \$300 a year³¹ might lead to strong pressure on the commission to waive the liability protection feature. Much danger lies in the waiver clause, for not only the passenger, but also the public and the other motor carriers are vitally concerned. To use this power of exemption properly requires not only an accurate knowledge of the financial status of the operator seeking waiver, but also a broad sense of justice to all parties concerned. Although one of the operators in Kentucky possesses assets of more than a million dollars, the commission in that state has granted no exemption from the insurance requirement.

The Texas bill of 1927 at one stage contained a waiver clause, but this was struck out and the bill became a law with no waiver

29. Re Motor Transportation Companies, Resolution 102 (Nebraska Railway Commission), P. U. R. Fortnightly, August 25, 1927, XV. In Virginia the court has held the commission order of certification not final where insurance requirement had not been met. 126 S. E. 201.

30. Pa. P. S. Com. *Rules and Regulations*, Rule 10, cited in *University of Pennsylvania Law Review*, June, 1927, 717.

31. *National Municipal Review*, September, 1927, 569.

discretion allowed the commission; the Missouri commission possesses this discretion and has exercised this power of waiver.

Sometimes in the presence of statutory silence on the question of liability protection, the commission prescribes protection through its rules and regulations. For example, the regulatory act of Colorado makes no mention of liability protection, but the commission has set forth exacting protection requirements³² similar to those specified under statutory provision in other states. But in contrast to the Colorado situation stands the experience in the District of Columbia, the supreme court of which has held that the statute giving the commission authority over rates and service has conferred no power on the commission to demand liability protection, and therefore that a commission order requiring liability insurance as a condition for operation was invalid.³⁴

The validity of the state requirement of liability protection has been upheld in New York,³⁵ in Illinois,³⁶ and recently in Arkansas.³⁷ In the latter case the contention that the business would not warrant replacing a personal surety by a corporate surety as directed by the commission under statutory authorization was swept aside by the court, thus emphasizing the public right to protection as over and against the claim to private profit. But it must not be concluded that where the carrier has valid claim to leniency in the enforcement of the liability feature the commission has been inconsiderate.³⁸

Several states specify that no additional liability protection shall be required of motor carriers by local government units.

32. *General Laws 1927*, ch. 270, sec. 11, and *Bus Transportation*, March 1927, 178; *Re Mitchell* (Mo.), P. U. R., 1928B, 680 (Annot.)

33. *Public Utilities Com. Rules and Regulations*, effective Jan. 1, 1932, Rule 32.

34. *N. A. R. & U. C. Bulletin* 59, 1926.

35. *People v. Martin* (N. Y. Sup. Ct. of Appeals), 197 N. Y. Supp. 2.

36. *Weksler v. Collins* (Ill. Sup. Ct.), 147 N. E. 797.

37. *Hester v. Ark. Ry. Com.* (Ark. Sup. Ct.), 287 S. W. 763, decided Nov. 15, 1926.

38. See, for example, *Re Ginocchio Brothers* (Nevada), P. U. R., 1920C, 340; also for the Washington experience, P. U. R., 1921 E (Annot.), 842.

and in the silence of the statute, the Nevada commission has ruled that it is sufficient for the carrier to file one bond and to furnish a transcript of such filing to the other counties through which he operates.³⁹

For what causes may recovery be made against liability protection? This matter does not lend itself easily to statutory definition. There exists a complexity of rights of the injured, of the carrier, and of the company selling the protection. Consequently the statutes do not give any definite answer to the question, but do give in general terms the recoverable causes. Some three-fourths of the states requiring liability protection provide for recovery for death or injury to persons, or damage to or loss of property, resulting from use or operation of the vehicle involved. Much wider opportunity for escape from responsibility exists under such a provision than is afforded by a statute like that of Kentucky, which specifically states that the liability protection guarantees against injuries to persons or damage to property carried or to other persons or property.⁴⁰

A bus passenger suffering severe fright at an impending wreck which was, however, avoided, but who suffered no bruising, and not being shaken or thrown, cannot recover damages according to decision of the New York supreme court.⁴¹ But in California a person has recovered damages for mental distress and anguish as well as for physical injuries.⁴²

Some instances where the motor carrier was adjudged at fault appear in the records. Where a bus overturns because of inadequate brakes thereby injuring passengers, the carrier must pay damages.⁴³ The fact that a person knocked unconscious by a bus is unable later to state just where she was standing when hit by the bus did not avoid liability; in order to prove negligence

39. *Ginocchio Bros. v. County Commissioners, P. U. R.*, 1924A, 308.

40. Act of March 5, 1926, Sec. 38a.

41. *O'Brian v. Moss*, 221 N. Y. Supp. 621.

42. *Perry v. Pickwick*, 243 Pacific 787.

43. *Ibid.*

of the driver it was sufficient for her to establish that she was standing on the sidewalk, and damages were awarded by the Pennsylvania supreme court.⁴⁴ Where a bus driver went so fast that he could not stop his vehicle when the car ahead slowed down but turned to the left and wrecked an innocent car, the injured occupants of that car recovered \$4,000 in the California district court of appeals. Responsibility was placed squarely on the careless driver.⁴⁵ A passenger injured when bus collides at street intersection may recover damages, the fact that ambulance with which it collided was observing no signals being no grounds for the bus doing likewise.⁴⁶ A driver running into a ditch six feet from the pavement when he tried to dodge a rock on the highway is guilty of negligence, and a passenger injured thereby may recover damages.⁴⁷ An award of damages was made to pedestrians struck by a bus despite plea of driver that the foot pedal was broken, and that the emergency was insufficient to stop the bus.⁴⁸ A passenger thrown out when an unsafe door flew open while the bus was in motion recovered \$2,000 damages for injuries sustained.⁴⁹ A passenger so injured as to require amputation of an arm below the elbow because the bus failed to clear with a private car in passing on the highway, though both vehicles were at fault, was awarded \$6,500 damages by the Kentucky court of appeals.⁵⁰ Since the state required at this time no insurance, the carrier had to pay this amount from his own pocket.

In a few cases the driver has been adjudged not at fault. No damages could be recovered from a carrier for injuries suffered by

44. *Hunter v. Pope*, 137 Atlantic 731.

45. *Power v. Crown Stages Co.*, 256 Pacific 457.

46. *Lamar v. Smith & Straud*, 5 S. W. (2nd), 824.

47. *Circle Tours* case (Ore. Sup. Ct.), 265 Pacific 801; see also *Bus Age*, August, 1928, 160.

48. *Phillips v. Pickwick Stages*, 259 Pacific 968; also *Bus Age*, July, 1928, 132.

49. *McCormick v. Index Stages*, 242 Pacific 1090.

50. *Reo Bus Lines v. Dickey*, 294 S. W. 1080.

high school student who rode on the fender while there was sufficient room inside the bus.⁵¹ The New York supreme court has held that a person standing carelessly on the curb up to which a bus draws to unload and load passengers cannot recover damages for being hit by the bus, where the latter proves itself not at fault.⁵² Where a driver, blinded by glare from another motor vehicle, tried his best to stop his bus before running over a man lying in the road, the carrier was exonerated and no damages were recovered.⁵³

The decisions reflect a well-marked tendency to hold the carrier responsible for injuries incurred by passengers and others when the carrier is at fault. They emphasize also that the obligation of being careful is not one-sided, but that it rests on passengers and on others as well as upon the carrier.

It is to be observed though that not all states seek guarantees or damages through the medium of liability protection. Maryland and California do not have and never have had any liability insurance requirement for motor carriers.⁵⁴

51. *Strong v. Olson*, 241 Pacific 107. Here foolhardy and adventurous riding met its just reward.

52. *Wood v. Woodlawn* (N. Y. Sup. Ct.), 214 N. Y. Supp. 398.

53. *Johnson v. Auto Interurban Co.*, 245 Pacific 920. See also *Laban v. Range Rapid Transit Co.*, 207 N. W. 533.

54. Maryland Public Service Commission *Letter*, October 10, 1927. A few years ago an insurance bill failed in the Maryland legislature; Railroad Commission of California, *Letter*, October 14, 1927.

CHAPTER 9

SERVICE AND RATES*

Among the phases of motor carrier regulation most frequently mentioned by the state laws we find the question of rates. More than thirty states have legislated on rates and practically all these deal with service also.¹

SERVICE

In Maryland, the commission is directed to secure safe and adequate service; Connecticut, Louisiana, Rhode Island, and Vermont empower the commission to control continuity of service. But it is by far more usual to confer on the commission power to "regulate the service" of motor carriers. As a commission in one of the western states has recently and aptly said, the object of the regulatory body should be to require the maximum service compatible with public safety.² The obligation to serve the public involves continuous service, regular departures and arrivals, and "dependable performance free from managerial caprice or financial waverings."³

As a condition of securing the certificate it is a practically uniform requirement that the applicant file with the commission a copy of his proposed service schedule which shows the time of departure and arrivals at termini and time at which the certificated vehicle will appear at the various points en route. The commission approves the proposed schedule, either making changes or not, and the schedule becomes effective. At an early date it was ruled that a copy of the schedule be in the hands of each driver, and a copy posted at each station; and that no changes be

*This chapter I published in *Cincinnati Law Review*, May, 1929.

1. See A. E. R. A. *Bulletin* 120, XVII, for a list of the statutes. Texas and Rhode Island should be added to the list.

2. *Nebraska State Ry. Com. v. Salistean*, P. U. R., 1928A, 338. Service is the paramount consideration and not the effect on the competitor, said the Vermont commission in *Re Appleyard*, P. U. R., 1927D, 672.

3. *Re White Star Lines (Mont.)*, P. U. R., 1924B, 193.

made in the schedule except by the commission to whom the proposal must be sent in advance.⁴ In Michigan, advance notice of change in schedule must be served on motor competitors, and given the public by notices posted. In each instance ten days notice is specified.⁵

While the motor carrier must not alter his service schedule without commission consent, occasionally there has arisen the question of the commission's changing at its own wish the schedule in keeping with what it perceives to be the best public service. An effective illustration is afforded by the Nebraska commission facing the solution of a schedule problem created by electric and motor carrier leaving the same points at the same time. The electric complained it would be ruined if its schedule were not changed and the bus protested that it would be put out of business were the proposed electric schedule approved. With the allegations thus presented, the commission approved the electric schedule, holding that such a change of schedule was necessary to provide the public with more frequent service, and that such modification was not arbitrary or class legislation.⁶ The Utah commission has ordered the service to remain as prescribed in the schedule, thereby forbidding an increase in service from one round trip a week to one round trip a day. The power of the commission to so order is embodied in the statutory authority "to supervise and regulate every public utility." To establish a one-hour service in place of a two-hour would be

4. *Re Transportation Companies (Calif.)*, P. U. R., 1918B, 315.

5. *Michigan Public Utilities Commission, Rules and Regulations*, Rules 13 and 14.

6. *O. L. R. & L. Co. v. Henry (Neb.)*, P. U. R., 1922B, 74. Alternation of bus schedule with that of a competitor was ordered by the same agency in 1927. *Re Cotner Bus Line*, P. U. R., 1928A, 686.

7. *Gilmer v. Public Utils. Com.* (Utah Sup. Ct.), P. U. R., 1926D, 469, decided June 2, 1926. To secure more advantageous service the Oregon commission has so changed departing time of motor vehicles as to allow ten-minute headway between buses of different carriers. *Oregon Stages & Silverton Transit Co.*, decided November 1, 1926.

convenient to but not necessary for the public and the petition so to do was recently denied in Kentucky.⁸

It tends toward a rule that so long as the service of the motor carrier is ample, he will not be subjected to additional competition. Temporary competition created by an unauthorized carrier who operates for a short time over a route held by a certificated protestant failed to produce commission imposition of the statutory penalty in Pennsylvania.⁹ In Ohio the existing carrier is entitled to the first opportunity to make sufficient his inadequate service.¹⁰ Where a motor carrier operating a bus on a road one and a half miles from the suburbs of a city makes to the suburb only one of his fourteen round trips daily, his service was ruled inadequate.¹¹ Motor carrier freight lines must furnish ample station and warehouse facilities in the towns served, and these facilities must be located to serve best the convenience of the shippers.¹²

That service is affected by the amount, physical condition, and terms of securing motor equipment finds recognition in the regulatory process. The rules and regulations often specify requirements as to the capacity, dependability, cleanliness and comfortableness of motor vehicles used. The matter of obtaining the equipment has attracted much less attention, but it has received noticeable attention in a few jurisdictions.

Holding that much of the financial loss on a particular line was attributable to the use of too much equipment, the Arizona commission has directed the irregular operators to cease. This means of securing financial relief was used rather than allowing a rate increase.¹³ Where an applicant offers to use better equip-

8. *Red Star Transportation Co. v. Red Dot Coach Lines* (Ky. Ct. of App.), 295 S. W. 419.

9. *Landis v. Henry*, P. U. R., 1919C, 554.

10. *C. D. & M. Electric Co. v. Pub. Utils. Com.* (O. Sup. Ct.), 155 N. E. 646; see also *Bus Age*, May, 1927, 34.

11. *Re Frank Pierce* (Wash. Dept. of P. W.), P. U. R., 1926E, 811.

12. *Re Streep* (Utah), P. U. R., 1925A, 288.

13. *Re Bohn*, P. U. R., 1918B, 291.

ment than that used by the existing carrier who does not offer to duplicate what applicant proposes, service demands that the latter be authorized to furnish motor transportation.¹⁴

While the certificate does not prohibit an increase in the equipment used, the commission is to decide whether service demands an increase in equipment, and an unauthorized increase is illegal, according to recent decisions in Utah¹⁵ and in Ohio.¹⁶ The Georgia commission has held that it is as much the duty of the commission to order a decrease in the equipment as to order an increase when business demands. In several states the substitution of equipment in an emergency, such as breakdown or accident, must be reported to the commission; such must be done in Michigan, for example, if the substitution is to last for more than a week.¹⁷ But how long a given substitution will last is, from the carrier's viewpoint, impractical to determine and at most such a rule must be interpreted leniently.

Experience beginning as early as 1918 has shown the California commission the necessity for requiring that equipment leased by motor carriers be leased according to commission order.¹⁸ As a result of a hearing that year at which eight carriers, the City of Los Angeles and the state were represented, the commission decided against leasing of equipment on basis of percentage of revenue derived per trip. Such a plan tended to destroy all responsibility for maintaining service schedule. The policy was arrived at requiring a motor carrier to own his equipment or to agree to pay a definite amount per trip or per unit of time the equipment is leased.

Expansion of the operative rights must be approved by the

14. *Re Boyce* (Nev.), P. U. R., 1923A, 153.

15. *Gilmer v. Public Utilities Commission*, P. U. R., 1926D, 469.

16. *Re Salisbury Transportation Co.*, P. U. R., 1927C, 611.

17. *Rules and Regulations*, Rule 23.

18. *Re Transportation Companies*, P. U. R., 1918E, 792, and *Re Lingo Bros.*, P. U. R., 1926A, 271.

commission in California, that agency has ruled,¹⁹ and this order was affirmed by the state supreme court.²⁰

In a few instances, the extension of motor service has come before the regulatory body. In exercising its authority to order an extension of motor service, the District of Columbia commission has declared that notice to the company is sufficient and that no hearing is necessary;²¹ and learning nine months later the extension order had not been complied with, the commission notified the motor carrier that only nineteen more days would be allowed for compliance.²² But the Ohio law requires a public hearing on the matter of changing, shortening or extending a motor service route, or the increase or decrease of equipment used, and an extension granted without such public hearing is void.²³ Extension, modification or increase of service must be treated as if an original application.²⁴

The Illinois commission has ruled against unauthorized extension of service, and held that transcending the limits prescribed in the certificate by hauling freight beyond the territory as a private contract carrier is illegal.²⁵

As it is the rule in Ohio that a carrier whose service is adjudged inadequate is entitled to the first opportunity to make it sufficient,²⁶ so has the Washington supreme court declared the

19. P. U. R., 1923A, 232.

20. *Motor Transit Co. v. R. R. Com.*, 209 Pacific 586.

21. P. U. R., 1922B, 756.

22. P. U. R., 1922C, 758. Any expansion of operating rights in California must be approved by the commission. *Motor Transit Co. v. R. R. Com.* (Calif. Sup. Ct.), 209 Pacific 586.

23. *Columbus Ry., P. & Light Co. v. Pub. Utils. Com.* (Ohio Sup. Ct.) 150 N. E. 237.

24. *Sciota Valley Ry. Co. v. Pub. Utils. Com.* (Ohio Sup. Ct.), P. U. R., 1927C, 186. The court in above case cites also *Central Ohio Transit Co. v. Pub. Utils. Com.* (O. Sup. Ct.), 154 N. E. 359, decided Jan. 31, 1927. In California a somewhat different view has been taken as to modifications of routes. *Re Overall v. Asken*, P. U. R., 1927C, 385.

25. *Re Kipps Express and Van Co.*, P. U. R., 1923E, 260.

26. Note 9.

existing carrier entitled to make the extension of service.²⁷ Here the court granted the privilege of extension to the existing carrier on the ground that he had offered to make the extension, was able to do so and had a statutory right to do so. In reversing the order of the commission and awarding the extension to the existing carrier, and in the reasons stated therefor, the Washington supreme court and the Ohio law are drawing close together.

Recipients of certificates are warned to observe the limits within which their service is authorized. However, the Pennsylvania commission has refused to penalize an operator who, having operated on highway for which he had no certificate, pleaded that he did not understand that his operations were limited to a particular route.²⁸ But where "safety, convenience, and service" demand, this commission may change motor carrier routes.²⁹

With the movement for unification of routes resulting in better-connected service, there has arisen the administrative problem of authorizing through routes and through rates. This matter of unification has not gone far, but there is already discernible a determination of the commissions not to allow unification of routes merely for sake of establishing through service. Where the public needs warrant the joining of two separate routes thereby producing a through service, the commission shows a tendency to allow such, but not otherwise.³⁰ Citing this decision of the California commission, the New York commission four months later denied authorization for through service where it was shown that public needs did not demand.³¹ To unify routes requires approval of the commission in advance, ruled the California agency in 1922,³² and affirmed by the state supreme

27. *Yelton and McLaughlin v. Washington Dept. of Public Works*, 240 Pacific 679.

28. *Fagan v. Pittsburgh Transportation Co.*, P. U. R., 1919E, 990.

29. *Philadelphia Suburban Transit Co.*, P. U. R., 1927A, 93.

30. *Re Wilson Company (Calif.)*, P. U. R., 1920C, 639.

31. *Re Graves*, P. U. R., 1920E, 131.

32. *Blair v. Coast Truck Line*, P. U. R., 1922D, 588.

court.³³ In the same state authority to unify four separate freight lines and to publish reduced rates was granted, the grounds being the elimination of freight transfer at termini, insufficiency of existing rail service, and public benefit in the form of lessened freight charges.³⁴ The fact that a competing freight carrier was offering lower rates than those on the four separate lines proposed to be joined, also entered into the decision.

The Indiana commission has indicated that when public need justifies, unification of service routes will be allowed.³⁵ Unification of routes is permissible in Ohio, but the procedural requirements of public hearing is indispensable.³⁶ Favor has been shown the applicant in Pennsylvania who having already one route could unify with the route sought, thereby establishing through service: he received the certificate as over the applicant who could not establish through service.³⁷

Many motor carriers are not in possession of enough routes to make unification possible or profitable, for many hold certificate for only one route. The carrier who has certificates for several routes if indiscriminately allowed to unify routes, thereby establishing through service at reduced rates, can play havoc with the carrier who is not in position to do likewise. Well might the commissioners exercise caution in authorizing unification only where public service demands such. A cautious attitude on the part of the commission recognizes not only the possible effect on the other carrier, but also the all too evident inclination of carriers to offer through passenger service selling therefore through passenger tickets restrictions on which evidence an aim

33. 215 Pacific 898. Recently an application to join routes has been refused in spite of the fact that competitor was charging lower rates than applicant. *Re Highway Transport Co.*, P. U. R., 1927B, 172. Through carrier has been limited to "through service" in Pennsylvania. *Re Edwards*, III Pa. P. S. Com. Reports 924.

34. *Re Highway Transport Co. (Calif.)*, P. U. R., 1926B, 172.

35. *Re Highway Transport Co. (Ind.)*, P. U. R., 1926D, 594.

36. *Pennsylvania R. R. Co. v. Pub. Utils. Com.*, 116 Ohio, St. 44, cited in *Cincinnati Law Review*, May, 1927, 316. See also last citation in note 23.

37. *University of Pennsylvania Law Review*, June, 1927, 714, note 74.

the operator to escape the responsibility for reliable service required of rail carriers.³⁸

Motor carrier service has already encountered the question of service to negroes. The matter rose early in West Virginia and was settled by allowing the negroes to ride indiscriminately.³⁹ The Virginia Motor Vehicle Carriers Act of 1923 as amended through 1926 looks to segregation of the races "so far as possible," in the traditional rail carrier requirement in the South.⁴⁰ The Indiana Public Service Commission has ruled that refusal of drivers to let negroes ride in the bus, the company officials having no knowledge of the practice, constitutes no ground to deny a certificate to operate on argument that the bus is not a common carrier.⁴¹

Early in 1927 the matter of negroes being admitted to the use of the bus came before the North Carolina commission. Segregation within the same vehicle or separate vehicles was the question, which the commission has answered by authorizing separate bus lines for negroes.⁴² This seems a highly desirable and satisfactory solution of the problem.⁴³

Under commission control appears also the discontinuance or abandonment of service. Cessation of service during winter months without commission consent was held as early as 1918 as equivalent to forfeiture of certificate, and to resume service would require securing another certificate *de novo*.⁴⁴ Two years later the same commission emphasized forfeiture as the penalty for unauthorized suspension.⁴⁵ Where there is little public demand for service, and the operation is not proving a financial success.

38. *Bus Age*, April, 1927, 41-2.

39. P. U. R., 1915E, 177.

40. Sec. 2.

41. *Re Peoples Motor Coach Co.*, P. U. R., 1926A, 385.

42. *Bus Transportation*, May, 1927, 290.

43. *Ibid.*, June, 1927, 358.

44. *Re Calistoga & Clear Lake Stage Line v. White Transportation Co.* (Calif.), P. U. R., 1918E, 827.

45. *Re De Luxe Transportation Co.*, P. U. R., 1920B, 679.

the District of Columbia commission has allowed discontinuance of motor service.⁴⁶

But where the operator in order to improve the passenger service, leases out motor equipment, at the same time better serving his freight patrons, he is not abandoning service, held the California commission in 1925.⁴⁷ Operation at a loss, and advice of the highway commission directing cessation of service on soft road were sufficient grounds for abandonment of motor service in Indiana,⁴⁸ and where one of two motor carriers is furnishing sufficient service the second may discontinue his operation.⁴⁹

RATES

The public has well demonstrated its primary interest in service rather than in rates. Short rides by motor are much more popular than by rail, and popular preference recognizing the advantages of the motor service has shown little tendency to quibble over the cost. Either because of this situation or in spite of it, there has been as little scientific study of rates on the part of the regulatory bodies as of any business phase of motor carrier regulation.

Among the earlier statutes to confer on the commission explicit authority to fix rates we find California, Colorado, Maryland, Ohio, Pennsylvania, Utah and Washington.⁵⁰ Until 1922 and perhaps later, the Wisconsin commission seemed in the novel position of being able to grant a certificate to operate, but unable to exercise any authority over rates or any other phase of motor carrier activity.⁵¹ Recently abundant legislation has been forthcoming, and in more than thirty states there is specific statutory authority for commissions to fix rates. Of states in which rates

46. Washington Rapid Transit Co., P. U. R., 1923B, 328.

47. Re Ingo Bros., P. U. R., 1926A, 271-2.

48. Re Crystal White Coach Line Co. (Annot.), P. U. R., 1926E, 360.

49. Re Kibler Trucking Co., *Ibid.*

50. P. U. R., 1922B, 214-21.

51. *Ibid.*

control has been authorized by the public utility or public service commission act, Indiana is an example. The commission may investigate rate matters and on finding the rates "unjust, unreasonable, insufficient or unjustly discriminatory or preferential, or otherwise in violation of this act," the commission is to fix reasonable, just and fair schedule of rates in lieu thereof.⁵² Rate investigation of anywhere-for-hire motor carriers was made by the Oregon commission in 1928.⁵³

The Minnesota motor carrier act of 1925 authorizes the commission of its own accord to establish "just, reasonable and non-discriminatory rates,"⁵⁴ thus evidencing that commission action need not be prefaced by a request for investigation. Rates existing before regulation was instituted are prima facie reasonable, as ruled the Wisconsin commission in 1927.⁵⁵ Power to "alter, fix and regulate rates" is given the Ohio commission,⁵⁶ while in Oklahoma the statute confers authority "to fix or approve the maximum or minimum or the maximum and minimum rates . . . of each motor carrier."⁵⁷ These illustrations give some idea of the varying degree of power the commissions have over the rate question. However, it is to be emphasized that the clear tendency of the legislation, and especially of that more recently enacted, is to give the commission full power over rates.

A usual and very infrequently omitted requirement is that the applicant for a certificate to operate file with the commission a copy of his proposed rate schedule. Frequently elaborate regulations are issued governing the rate schedule. For example, those announced by the New York commission provided that:

52. Public service commission act, as amended through 1925, Section 72.

53. P. U. R., 1928D, 427.

54. *Laws of Minnesota*, 1925, Ch. 185, Sec. 4.

55. *Re Auto Transportation Co., Applications*, P. U. R., 1928B, 439.

56. *General Code* 614-86. No deviation from rates fixed is valid in Utah.

57. *Re Milne*, P. U. R., 1927D, 88.

57. Senate Bill 341, 1923, Sec. 2. That rate wars have actuated the instituting of regulation of motor carriers in Missouri, see P. U. R. fortnightly issue of January 26, 1928, Special Section, xii-xv.

- (1) Rate schedule show in detail the rates charged between various points.
- (2) Schedule of passenger rates show what provision has been made for transfers.
- (3) Changes in the rate schedule may be sought by the carrier, and when approved by the commission become part of original schedule.
- (4) Changes in rate schedule can be made on 30 days notice to commission; and unless that body deems the existence of an emergency, 30 days publication of the proposed rate changes must be given.
- (5) Schedule of rates are subject to commission modification at any time.
- (6) When a certificate changes hands, the recipient must notify the commission immediately of its acceptance of the existing rate schedule.⁵⁸

That a rate schedule once accepted by the commission is to be lived up to until changes are authorized by the commission has been affirmed in Utah,⁵⁹ and the clear inference that charging freight rates for express or express rates for freight will subject the offender to cancellation of certificate is revealed in the same decision.

Uniformity of rates for all persons receiving the same service is frequently stressed.⁶⁰ It has been ruled in Indiana that rates need not be uniform on all sections of the same line, that on one part the rate may be higher than on another, especially so if competition exists on the latter part.⁶¹ But uniformity of rates must exist for all motor carriers between all points served by them, said the California commission in 1922.⁶²

58. New York Public Service Commission, Case 3011, January 21, 1920.

59. *Re Salt Lake v. U. R. Co.*, P. U. R., 1925A, 154-60.

60. For example, *Re Cheney & Peterson (Utah)*, P. U. R., 1925E, 312.

61. *Re Madison-Columbus Bus Line*, P. U. R., 1926C, 810.

62. *Re Hanchett*, P. U. R., 1922B, 708.

Where a carrier had been denied an increase in rates about a year previously, the Utah commission later allowed an increase of 20-25 per cent., in view of the decreasing business attributable to shutting down of mines and consequent migration of population, and in view of the decrease in business because of greater use of private owned cars.⁶³

In the District of Columbia it has been decided that when existing rates do not provide revenue sufficient to pay the cost of operation and to earn a fair return on the investment, an increase in motor carrier rates is justifiable; and the commission allowed a 25 per cent. increase.⁶⁴ This language as to when an increase is permissible sounds not at all unlike the pronouncement of "fair return on fair value" made by the United States Supreme Court in *Smyth v. Ames*.⁶⁵

But in a number of cases increase in rates has been denied. The commission last cited has refused an increase in motor service rates for the reasons that the service offered was poor, and that schedules were not kept, despite repeated reminders to do so.⁶⁶ A request to raise rates by a carrier who had been forced to reduce rates to meet competition and who was rapidly losing money was denied by the Arizona commission, but relief was granted by the commission's ordering irregular operators to cease running on the routes involved, thereby leaving more business for the regular operator whose revenues were decreasing.⁶⁷ Such procedure reflects the commission's interest in public welfare. But the same commission refused to allow a motor carrier to charge a flat rate of 50 cents per cwt. for freight when the rail rate was five cents higher.⁶⁸

63. Re Engle (Utah), P. U. R., 1922B, 399. The fact that a driver accepts an unlawful fare does not incriminate owner of line as acquiescing in illegal act. *Haddad v. State* (Ariz. Sup. Ct.), 201 Pacific 847.

64. Washington Rapid Transit Co. (D. C.), P. U. R., 1924E, 321.

65. 169 U. S. 466 (1898).

66. Re Metropolitan Coach Co. (D. C.), P. U. R., 1915D, 740.

67. Re Bohn, P. U. R., 1918B, 291.

68. Re Turner, P. U. R., 1922B, 761.

Authority to so raise certain rates as to unload on competing carrier the more unprofitable short haul traffic has been denied in California.⁶⁹ Here the petitioner would raise from 25 to 40 cents the fare between two local points, push this traffic on to the competitor, and thereby speed up through traffic. But such a practice serving to discourage local traffic from using the "through" service and to confine it to the local operator, is permitted in Ohio.

The Utah commission has allowed a carrier to charge sur rates as would produce a return of six per cent. on value of property used in public service.⁷⁰ In California a certificate was denied an applicant to establish special tourist service where it was shown that under certificate already held he was charging rates producing return of 16.5 per cent. on undepreciated value of property devoted to public service.⁷¹ At the regional hearing in 1926 some operators expressed a fear that a limitation of rate of return to six per cent. would hamper seriously the development of the "infant bus industry."⁷²

A Pennsylvania carrier who was realizing 50 per cent. return on investment from the existing rates was refused authority to raise his rates from 80 to 100 per cent. above what he was charging.⁷³ Here is an indication of the carrier's propensity to "charge all the traffic will bear." In this case, however, the commission laid down the principle that when public convenience and necessity demands extensions and improvements, an increase in rates will be allowed. Whether a decrease in the rates which were yielding a fifty per cent. return on investment should have been ordered by the commission seems hardly an open question, but the commission did recognize that the time and effort of promoters of small bus operations preclude the application to bus operators

69. *Re Hanchett*, P. U. R., 1922B, 708.

70. *Re Tolton*, P. U. R., 1922D, 576.

71. *Re J. A. Boyd*, P. U. R., 1925A, 721.

72. *Bus Age*, April, 1927, 42.

73. *Barber v. Drew* (Pa.), P. U. R., 1920C, 194.

the same principles of rate regulation as are applicable to large utilities with great capital investment.

In a few jurisdictions the reduction of rates has engaged the attention of the commission. A petition signed by thirty-two residents along a particular highway in Indiana sought a reduction of the bus fare from five and a third cents a passenger mile on their end of the bus route to three cents, the amount charged at the other end of the route; but in view of the competition existing on the section with the higher rate, the commission denied the petition.⁷⁴ A temporary reduction of rates of certificated carrier has been allowed in Missouri in view of rate cutting by "outlaw" operators.⁷⁵ In the same state a decrease in rates was permitted the authorized carrier who said he would still have a safe margin of profit; the competitor protested against the reduction.⁷⁶

Where the former rate had been restored by an electric line, the Indiana commission allowed a competing bus line to do likewise.⁷⁷

The effect rate reduction by a large carrier would have on a small competitor was presented in *Price v. Pickwick Stages*.⁷⁸ Pickwick reduction had decreased the business of Price, who asked the commission to restore the rate prevailing before the Pickwick reduction began. At the hearing, Pickwick introduced evidence that its reduction was not aimed to "freeze out" Price, but that the reduction was part of a general rate readjustment; the petition of Price was denied. The California commission has also stressed its power to lower rates either on complaint or by its own initiated investigation,⁷⁹ a power which is generally possessed by the commissions. But where not even the complainant appeared at the hearing to testify that public convenience and

74. Note 61.

75. *Re Greyhound Lines*, P. U. R., 1928C, Special Section, 41.

76. *Re Vicory*, *Ibid.* 44.

77. *Re Jahns Bus Co.*, P. U. R., 1928C, 60.

78. P. U. R., 1920E, 581.

79. *Re Highway Transport Co.*, P. U. R., 1926B, 184.

necessity demanded an equalization of the blanket rate from terminal to each of several local points, the commission refused to interfere with the blanket rate.⁸⁰

Joint rates look to the greater convenience of the patronizing public and recognize the necessity for cooperation among carriers. Emphasis has been put on the necessity of securing commission consent to the establishment of joint rates by the California commission, which has approved many joint rate arrangements, especially in the year 1923-4.⁸¹

Two of the leading motor carriers on the Pacific coast have been authorized to publish joint rates and sell through tickets over their connecting lines, the fare being less than was previously charged over the lines separately.⁸² That the reduced fare would injure a competing rail line was not considered a controlling factor. Lower rates proposed have figured in the granting of certificates in California. In one instance, a motor applicant offering lower rate than that offered by the electric applicant received the certificate;⁸³ in another case the electric, offering lower proposed fares, received the certificate in preference to the motor applicant.

The question of passes and rebates has already made its appearance in motor carrier operation and regulation. According to the California commission, the issuance of free or reduced transportation as passes must be confined to officers, agents, and employees of the transportation companies and their families and to "charitable and patriotic purposes"—a phrase not at all definite.⁸⁴

Reduced rates in the form of weekly passes has been used for passengers in Pennsylvania, but the commission allowed the discontinuance of this feature on evidence that a deficit had resulted.

80. Re Peninsular Rapid Transit Co., P. U. R., 1922D, 76.

81. Auto Stage and Truck Transportation Department, *Annual Report* 1923-4, 14.

82. See P. U. R., 1926D, 609.

83. Re United Stages, P. U. R., 1928E, 137, decided March 5, 1928.

84. Re Pacific Electric Ry. Co., *Ibid.*, 136.

85. Re Transportation Companies, P. U. R., 1918B, 314.

sulted, and that the revenue from a pass passenger ranged from four to five cents, while that from the non-pass passenger was 6 cents.⁸⁶

In Connecticut was sought permission to institute the weekly pass in order to stimulate riding and thereby increase revenue. At the hearing in behalf of the pass petition appeared Mr. Walter Jackson, of Mt. Vernon, New York, a recognized utility rate expert. The commission decided to allow the weekly pass for a trial period of twelve months, and on the basis of strict monthly reports to determine then whether to allow the weekly pass as a part of the regular rate structure.⁸⁷ In allowing a proportional rate for a long haul lower than the aggregate combined rates for component short hauls, the California commission appears to be the first to handle the long and short haul question in motor carrier operation.⁸⁸

Abuse in allowing a commission to those who "drummed up" business for motor carriers, thereby reducing the legal charge for transportation led the California agency to restrict the paying of commissions for such business to bona fide agents of the carrier as evidenced by a contract filed with the commission.⁸⁹ A motor carrier must not issue passes to agents who are shippers, or pay them commissions on goods hauled where to do so "would result in the reduction on freight personally received or shipped by such agents." Thus sought the commission to circumscribe the conduct of bona fide agents of motor carriers.⁹⁰ In this case the improper practice escaped the penalty of cancellation of certificate because the commission concluded the amount of traffic did not warrant salaried agents at certain points, and that such inducements were used to "reduce operating expenses."

86. P. U. R., 1925E, 737.

87. Re Lordship Ry. Co., P. U. R., 1927A, 632.

88. Motor Service Express v. Baker, P. U. R., 1928C, 531.

89. P. U. R., 1918B, 316.

90. Re Lingo Bros., P. U. R., 1926A, 272.

Rebates on motor carrier rates have been forbidden in a few states, Indiana, Nevada and Maine, for example.⁹¹

According to Walter Jackson,⁹² the motor carriers originally charged "whatever rates would bring the business, and frequently these proved too low." "In any case the determination of the rate must be more or less individual—depending on the estimated cost of operation and the density of traffic to be expected." This authority takes the view that for long haul sound motor passenger rates must be from four to five cents a mile.⁹³ Bases often entering into rate fixing include in addition to those mentioned by Jackson, condition of highways (which of course affects operating costs), carrying capacity of vehicle, and the rates charged by rail lines.

In Indiana, Ohio, Kentucky and North Carolina the passenger mile rate approximates 2½, 3, 3.3, and 4 cents respectively. In 1926 the Bus Division of the American Automobile Association made a survey of rates charged by 516 carriers in thirteen states. It was found that the rates ranged from 2.9 per passenger mile in Minnesota to 10.3 cents in Colorado, with an average based on total mileage run and total revenue realized of 5.7 cents. According to Mr. Jackson's standard, it appears from the Bus Division Survey that motor carrier rates are a little more than "sound."

The survey made by the Bus Division in 1926 seems the most extensive inquiry made into the rate question. The Motor Truck Committee of the National Automobile Chamber of Commerce has investigated truck rates in the region of New York City, and may possibly make a survey of truck rates throughout the

91. See Regulatory acts of these respective states.

92. *Letter*, August 17, 1927.

93. *Ibid.* Passenger rates in Michigan fixed on mileage basis must not be in excess of 5 cents a mile. Michigan Public Utilities Commission, *Rules and Regulations*, Rule 18.

94. John M. Meighan, Secretary Bus Division, *Letter*, Oct. 19, 1927. The states surveyed are California, Colorado, Connecticut, Illinois, Louisiana, Michigan, Minnesota, New Mexico, Oregon, South Carolina, Utah, Washington, and West Virginia.

country.⁹⁵ Nor has the National Association of Railroad and Utility Commissioners made any survey of motor carrier rates; it was not anticipated that the Association will do so.⁹⁶

While the discussion in this chapter may serve to give an idea of what is being done in isolated specific cases, the lack of available comprehensive rate data makes impossible at this time any definite conclusions as to the status of rates and rate-fixing.

Although the prevailing statutory provisions amply empower the commissions to set up a constructive rate policy the practice shows that little use has been made of this authority. From correspondence, commission reports and conferences, it appears to be the usual practice for the commission to approve the rate schedule proposed by the recipient of a certificate. The regulatory commission with its multiplicity of utilities to supervise has little time to specialize on motor carrier rates. Consequently it is much easier to approve the proposed rates, leaving open the way for aggrieved parties to protest.⁹⁷

Pointing out that topography, road conditions, and density of traffic are the factors on which rates must be determined, Commissioner Amos A. Betts, of Arizona, concludes that bus operation is not surpassed in the difficulty it presents in formulating uniform rates for service. Writing in the summer of 1928, he sees no prospects of a uniform rate schedule for the country as a whole.⁹⁸ The Wisconsin commission recognizes and deplores the absence of intelligible levels of motor freight rates.⁹⁹

While commissions are accomplishing much in the direction of standardizing and safeguarding service, it cannot be contended that a constructive rate policy for motor carriers has yet reached the embryonic stage.

95. National Automobile Chamber of Commerce, *Letter*, October 25, 1927.

96. National Association of Railroad and Utility Commissioners, *Letter*, November 1, 1927.

97. On the question of rates and rate-fixing, see further the following: P. U. R., 1915C, 78-9; 1922B, 214-21; 1924C, 275; and 1926B, 184.

98. P. U. R., 1928D₃, Special Section, 10.

99. P. U. R., 1928B, 445-47.

CHAPTER 10

SPECIAL TAXATION AND CONTROL OVER FINANCIAL AFFAIRS

SPECIAL TAXATION

In considering motor carriers as a source of public revenue we shall confine our attention to special taxes and fees levied in return for the particular privileges enjoyed by the motor carriers.

The bases of taxation of passenger vehicles reveal much variety. Twelve states levy the tax on seating capacity of the vehicle. For the basic size vehicle this tax ranges from approximately \$2 per seat in Connecticut to \$6 in Indiana. In Arkansas it is \$2.50; New Jersey and New York, \$3, and in Massachusetts \$4 per seat. Usually the scale of tax is graduated according to carrying capacity. Weight is the basis of the tax in Michigan, Wisconsin, and Vermont; Utah and Oklahoma use miles traveled, the rate of tax being 1-5 cent per mile in the latter and 1-4 cent in the former. Six states tax gross receipts, in California the rate being $4\frac{1}{4}$ per cent. and 6 per cent. in North Carolina. In Minnesota a tax of 10 per cent of the vehicle obtains, the minimum fee per vehicle being \$250. Georgia prescribes a flat rate of \$75 on each public passenger vehicle, while Maine requires double the registration fee exacted of private cars. Like the latter two states New Hampshire seeks simplicity, but requires only the same fee as demanded of private cars.

But in some twenty states these simple and single bases of taxation are employed in various combinations. The combination takes the form of regular registration fees plus seating capacity in Kansas; gross weight plus seating capacity in two states; gross weight tax plus regular registration fees, in Illinois; seating capacity times miles traveled plus gross weight, in South Carolina; seating capacity times weight times miles traveled, in Maryland; and in Oregon seating capacity times miles traveled plus weight constitutes the tax basis of passenger vehicles.

Horsepower plus gross weight serves as the basis in Rhode

Island; horsepower and carrying capacity in Louisiana; and horsepower plus gross weight plus seating capacity in Mississippi. New Mexico uses a flat rate plus seating capacity; similarly does Nebraska.

Property carrying vehicles show less multiplicity of bases of special taxation than does the passenger carrying group. Flat rate plus carrying capacity, miles traveled per vehicle, and ton miles traveled are found in a few instances; Illinois uses gross weight plus usual registration fees, while Maryland employs gross weight times ton miles times miles traveled. The basis in Oregon consists of ton capacity times miles run plus tire width. Four states specify gross receipts as the basis, and five tax the vehicle according to carrying capacity. In twenty-two states property carrying motor carrier vehicles pay the same special tax as is demanded of private owned and operated commercial vehicles.¹

In Kentucky the franchise has appeared as a tax basis. In 1926 the public service franchise law was so amended as to include motor transportation companies. The franchise tax is computed by (1) ascertaining the net earnings of the carrier the preceding year; (2) ascertaining the value of tangible property; (3) subtracting (2) from (1) and capitalizing the difference at 7 per cent., to determine the franchise value; (4) calculating this franchise value at 50 cents per thousand dollars.

The use of weight of vehicle as basis of taxation seeks to compensate for wear on the road. Miles traveled and carrying capacity aim at road wear and potential volume of business that will be done; the gross receipts basis has as its object the volume of business actually done. The franchise tax as computed in Kentucky aims at the value of the privilege as measured by net earnings, which may be denominated profits. While the weight tax approaches the question of motor carrier taxation from the

1. Motor Vehicle Conference Committee, *Special Taxation for Motor Vehicles*, 1927, a pamphlet-digest invaluable in its field.

negative angle of damage to the highway, the other bases approach from the positive angle of the value of the privilege of carrying on a motor carrier business.

As indicated in the first of this chapter, the amount of tax on a particular type imposed varies from state to state. Not only do the several types of tax vary in different states, but the sum total of all forms of tax levied on a similar vehicle by different states reveals an unusual range. Considering the total special taxes and fees together with the gasoline consumption tax, H. R. Trumbower,² professor of economics at the University of Wisconsin and formerly economist for the U. S. Bureau of Public Roads, has prepared a table showing the exactions on the typical 20-passenger bus. He takes the 20-passenger bus with pneumatic tires; weight, 9,000 lbs.; cost, \$8,000; 30 horsepower; mileage of 50,000 yearly; \$12,000 gross receipts, and consumption of 7,142 gallons of gasoline in 1926. The tax burden on the vehicle is above \$1,000 in five states;³ from \$500 to \$1,000 in twelve;⁴ \$200 to \$500 in twenty-two;⁵ and less than \$200 in ten states.⁶

New Jersey shows a total tax exaction of \$30 on this typical vehicle, while her neighbor Maryland represents the other extreme, \$1,571.41. No wonder that Maryland has authorized only 155 common carriers, while New Jersey, traditionally kind to corporations, has authorized 1,166 motor carriers. Of the 458

2. *Proceedings of the First Annual Meeting of the Motor Bus Division*, June 15-17, 1927, 85.

3. Maryland, Iowa, Oregon, North Carolina, Utah.

4. Minnesota, West Virginia, Idaho, Florida, Arizona, Nevada, Kentucky, California, Virginia, South Dakota, Connecticut, and South Carolina.

5. North Dakota, Mississippi, Arkansas, Wisconsin, Oklahoma, Kansas, Michigan, Indiana, Georgia, Ohio, Nebraska, New Mexico, Tennessee, Maine, Washington, Vermont, Montana, Louisiana, Texas, Colorado, Wyoming, and Alabama.

6. Pennsylvania, Delaware, New Hampshire, District of Columbia, Missouri, Rhode Island, Illinois, Massachusetts, New York and New Jersey. The last four had no gasoline tax in 1926.

interstate lines in the United States, New Jersey has authorized 81 or 18 per cent. of the total.⁷

In the use to which money resulting from the various forms of special taxation may be put the states tend to group themselves into three classes. First, those which require the receipts to be credited to the state highway fund. Some twenty states are in this group, a few of which specify to some extent the distribution of the money.

The second group consists of states which direct an exact division of the money between the fund for local road purposes and that for state road purposes. About a dozen states fall into this class. The division may be on a 50-50 basis, as in Colorado and California, or on a 25-75 basis, as in New York. The county may be the only local unit designated for a share of the resulting funds, as in Colorado; the municipality may be the favored local unit, or both may come in for a share, as in Ohio, where 30 per cent. goes to the municipalities, 25 per cent to the counties, and the remaining 45 per cent. to the state highway fund.

A third group of states are those which specify that administrative expenses be paid from the receipts, and then direct an exact division of the remainder between local units and the state highway fund. For example, Maryland, after directing payment of administrative expenses, specifies one-fifth of the remainder for Baltimore City and the rest to the state highway fund.⁸

It must be emphasized that the above classifications are not exact; minute and tedious details defy exact grouping, and not only are those placed in one class likely to overlap somewhat the limits of that classification, but also those in the same group may differ from one another on many minor points.

Relatively little litigation has arisen in connection with motor carrier taxation. Perhaps this is attributable in part to an early

7. *Bus Facts* 1927, 4. According to Trumbower, the average tax per bus in 1927 was \$511.81. *Bus Facts*, 1928, 30.

8. Note 1.

decision of the United States Supreme Court validating a statute levying a higher tax on bus companies than on other users of the highways.⁹ Here the difference between public and private use of the highway justified the tax. A gross receipts tax is not a tax on the vehicle but an exaction for the use of the highway and in Idaho the gross receipts tax is not a toll, but a constitutional license fee for the use of the road.¹⁰

The court of appeals of Kentucky in two cases has pointed out that the state may levy one form of tax for revenue, and another for the cost of administering the law and repairing the damages to the highway caused by operating buses thereon. The special fees exacted are not occupational taxes either, but approach rent for the use of the highways. It was also held that the existence of the special license fees and the franchise taxes did not, as appellants contended, constitute double taxation.¹¹ But a Pennsylvania statute levying a gross receipts tax on corporations engaged in transportation has been held invalid by the supreme court, on the grounds that the tax was not imposed on individuals and partnerships similarly engaged;¹² but a three per cent. gross receipts tax levied on buses and taxicabs has been upheld in Alabama.¹³

Exempting sightseeing buses from taxation has been held invalid.¹⁴ Organizing a club to carry passengers from one town to another without stops seeks merely to defeat the tax requirement imposed on the common carrier for hire, and the usual tax cannot be avoided by such a practice.¹⁵ But county ordinances exacting license fees amounting to 13.3 per cent of gross receipts

9. *Packard v. Banton*, 264 U. S. 140.

10. *Smallwood v. Jeter* (Idaho Sup. Ct.), 244 Pacific 149.

11. *Blue Coach Lines v. Lewis* and *Reo Bus Lines v. Fuller*, 294 S. W. 1080. On double taxation, see especially the U. S. Supreme Court decision in *Interstate Buses v. Blodgett*, decided Feb. 20, 1928.

12. *Bus Transportation*, Sept., 1928, 514 (no citation to case given).

13. *Clifton v. State* (Ala. Cir. Ct. of App.); *Bus Age*, July, 1928, 139.

14. *Bus Transportation*, February, 1927, 89-92.

15. *Fort Lee Transportation Co. v. Edgewater* (N. J. Ct. of E. & Appeals), 133 Atl. 424.

re unreasonable, excessive and confiscatory, and therefore illegal.¹⁶

CONTROL OVER FINANCIAL AFFAIRS

Five states by statute put under commission authority the issuance of securities by motor carriers.¹⁷ For the most part, the statutes so prescribing merely declare applicable to motor carriers the provisions of the public utility act relating to security issues. It must not be concluded that the absence of specific authorization in the act precludes commission exercise of control over security issues, since the statute generally confers on the commission ample powers to issue rules and regulations governing the relations between the carriers and the public.

Because motor carriage was in the experimental stage, the Missouri commission in 1928 approved the sale of motor carrier notes bearing an interest rate of 10 per cent.; it also held¹⁸ that the use of past income to retire notes given for equipment now in use entitled the carrier to capitalize income items, the carrier's equity above liabilities amounting to \$155,514.

As early as 1922 the Michigan commission ruled that heads of motor carrier lines already established should be allowed to issue stock, but that new applicants should not be so permitted.¹⁹ But administrative experience with the issuance of motor securities has been most complete in California. Even before the statute was so amended as to include specifically the issuance of securities, the commission ruled that under the law of 1917 it was obligatory on motor carriers to secure commission approval in advance for issuance of securities which would run for more than one year, and which would increase the outstanding indebtedness of the motor carrier to \$2,500 or more.²⁰ The application of so low a limit would evidently tend to include all carriers who sought

16. *Ginocchio Bros. v. Co. Com'srs* (Nev.), P. U. R., 1924A, 306.

17. California, Illinois, Indiana, Maryland, and Vermont.

18. *Re Greyhound Lines*, P. U. R., 1928C, 324.

19. *Re Himburg*, P. U. R., 1922C, 420.

20. P. U. R., 1918B, 309.

to issue securities. But the commission has no authority to approve the issuance of stock to recoup losses representing charges which should have been included in operating expenses.²¹ Excessive expenditures in the sale of securities previously authorized brought commission refusal to approve further issue, unless the amount spent in excess be returned by the officers.²²

Absence of intent to violate the law did not excuse the offender who had issued stock without the commission approval, and while refusing to validate the stock already issued, the commission in view of no willful violation, agreed to authorize new stock to replace that illegally issued if the latter were surrendered to the commission.²³

The same commission has faced the question of what to allow for the expenses of selling the stock issued. The proposal of the company to sell at 25 per cent. above par, the excess to take care of the expenses of selling the stock, was disallowed by the commission, which fixed the amount at 15 per cent.²⁴ In another case only five per cent. above par was allowed, and it was specifically stated that none at all should be allowed for the sale of stock by the officers of the issuing company.²⁵

In deciding whether to allow an issue of stock, it was held in March, 1926, that in the absence of proof that appraisal was correctly made, and in absence of evidence as to the methods of making the appraisal, neither the appraisal made by an appraisal company nor a balance sheet based thereon constituted valid evidence for the commission to approve the issue.²⁶

No power to issue a stock dividend rests with the commission; it was declared in 1924,²⁷ and reaffirmed a year later;²⁸ but the commission may allow the carrier to issue stock to recoup the

21. Re Union Pacific Stage Co., P. U. R., 1927E, 321.

22. Re Consolidated Motor Freight Lines, P. U. R., 1926D, 499.

23. Re Richards Trucking and Warehouse Co., P. U. R., 1926E, 342.

24. Note 22.

25. Re Drayage Service Corp., P. U. R., 1926C, 774.

26. *Ibid.*

27. Re Auto Transit Co., P. U. R., 1925A, 218.

28. Note 25.

company treasury for surplus earnings invested in its "properties and business," the stock to be distributed as a dividend after the treasury has been reimbursed.

So far as its experience has gone, the California commission reveals a clear tendency to protect both the motor carrier and the public against the danger of hasty and faulty issue of securities.

Continuous and adequate service demands that sufficient and proper equipment be available at all times, and among the well-established utilities a common requirement is to guarantee through depreciation reserve the ability to secure necessary equipment to replace that which is worn out or becomes obsolete. It appears that only Iowa,²⁹ Kansas,³⁰ and Oklahoma³¹ have by regulatory act specifically empowered the commission to set up requirements for depreciation reserve.

In 1915 the District of Columbia commission allowed a depreciation rate of 15.7 per cent. on reproduction cost of equipment owned at the time, and the same rate on original cost new of equipment thereafter purchased.³² About the same time this commission in another case fixed the depreciation charges at 19.7 per cent of cost of property new.³³ In 1916 it ordered a transfer company to fix its depreciation account at 5½ per cent. on its motor buses and trucks.³⁴ The Missouri commission has held that an automobile costing \$1,800 when new had so depreciated by three years use as to be worth only from \$584 to \$784.³⁵

An annual depreciation rate of 50 per cent. has been held excessive in California;³⁶ the commission added that a vehicle depreciating so fast is not economically suitable to motor carrier use. In the same year this commission held that a depreciation

29. Act of April 17, 1925, Sec. 2.

30. Act of March 23, 1925, Sec. 2.

31. Act of 1923, Sec. 2. But the general powers conferred by the act may authorize the commission in other states to so require.

32. *Re Bennet Taxicab Co.*, P. U. R., 1915E, 6.

33. P. U. R., 1915E, 1.

34. *Re Union Transfer Co.* (D. C.), P. U. R., 1917A, 225.

35. *Simms v. Columbia Telephone Co.*, P. U. R., 1915C, 367.

36. *Re Crown Stages*, P. U. R., 1921A, 747.

rate of 25 per cent. on old equipment was excessive;³⁷ and when in 1924 an operator claimed a 25 per cent. depreciation, the commission allowed 20 per cent.³⁸ Depreciation on worn out equipment has been rejected as a permissible item of operation expenses by the Nevada commission; a Missouri court has allowed a depreciation rate of 25 per cent. on first six months of vehicle's life.³⁹

The Indiana public service commission on July 31, 1929, ordered that every motor carrier operating under state certificate set aside each month from its gross receipts $2\frac{1}{2}$ per cent. of the original cost of each motor vehicle operated under the certificate. But this depreciation reserve plan proved too expensive and the commission later allowed a discontinuance of depreciation reserves.⁴¹

Experience of the District of Columbia and California commissions demonstrates clearly the difficulties involved in formulating a program of depreciation reserves. The great variety of conditions which may appear in different cases added to the various types and grades of equipment used make difficult the establishing of any fixed rate of depreciation.⁴²

By regulatory act, twenty-one states authorize the commission to prescribe a system of accounts for motor carriers.⁴³ While the power to so prescribe is not necessarily limited to specific authorization, there has been in practice less widespread exercise of this power than might be expected. Among the states in which uniform accounting has been prescribed, one finds Indiana, Ohio, California, and Utah. States like North Carolina and Kentucky have not set up an accounting system.

Recently the Minnesota commission prescribed a system cover-

37. Re Golden Eagle-Barker Stages, P. U. R., 1922D (abstract), 376.

38. Re Lloyds Transportation Co., P. U. R., 1924D, 482.

39. *Ginocchio Bros. v. Board of County Com'srs.*, P. U. R., 1924 A, 302; *Thomas v. American Automobile Agency*, 5 S. W. (2d) 659.

40. Re Public Utilities Engaged in Transportation, Decision 511-M.

41. Conference with the commission, June 7, 1927.

42. See remark of California Commission on this matter in Note 32.

43. A. E. R. A. *Bulletin* 120, VIII.

ing several points of financial operation: operating expenses, operating revenue, income, profit and loss, general balance sheet, property account and equipment account.⁴⁴ The *Report* of the public service commission of Oregon indicates that a sufficiently comprehensive system of accounting is employed by the motor carriers in that state. Eight phases of financial operation are included: capital stock, funded debt, property and equipment account, operating revenues, operating expenses, taxes, operating income, and net income.⁴⁵

An extremely comprehensive scheme is in vogue in California, the schedule "Operating Expenses" alone carrying thirty-four subdivisions.⁴⁶

Authority given to prescribe an accounting system is usually followed by the requirement that when once set up the system must be observed by the motor carriers until and unless the commission authorizes otherwise.⁴⁷ The statutes in some states, notably Utah and Maryland, provide that the system of accounting set up shall conform as closely as possible to that established by the Interstate Commerce Commission. Here is recognized the advisability of uniformity not only among the carriers of a particular state, but for all carriers throughout the country.

But in spite of state efforts, and the efforts made by motor carriers themselves, there is in use no satisfactory accounting system among the motor carriers.⁴⁸ Until and unless a fairly accurate knowledge of the cost of operation can be arrived at, it is impossible to determine rates which will allow the operators a fair return on investment and provide for the public adequate safeguards against excessive charges. Therein lies the basic problem in rate fixing.

44. *Bus Transportation*, March, 1927, 181.

45. *Eighteenth Annual Report*, 216-17.

46. Railroad Com. of State of California, *Report* for fiscal year ending June 30, 1926, 198-359, especially 253.

47. *Re Streeper* (Utah), P. U. R., 1925A, 288; *Re Drayage Service* (Calif.), P. U. R., 1926C, 776.

48. C. S. Duncan, in *Bus Age*, April, 1927, 39.

CHAPTER 11

TRANSFER OF THE CERTIFICATE

The statutes in thirteen states provide for transfer or assignment of certificates, but it is a well established practice for such to be done only by commission approval.¹ It is usual for the commissions to look well to the financial ability of the transferee and his willingness to furnish proper service, the point being clearly stated recently by the Ohio commission to the effect that the transferee must offer the same qualifications as to ability and willingness to furnish service as if he were applying for an original certificate.²

Despite the protest of complainant that the commission had no power to transfer a certificate from an individual to a corporation the Utah commission, finding on investigation no reasons for letting the service stop, or for cancelling the certificate, authorized the transfer.³ Here public necessity for continuance of motor service justified such action. The transfer of certificates has been predicated on payment of all taxes due on the part of the holder.⁴

The California commission has authorized transfer of certificates knowing full well that an element of speculation was involved; the commission promised to be more strict in the future on the matter of speculation.⁵

Let us examine the grounds for refusal to authorize transfer of certificates. Where a holder has deliberately discontinued his service, he is not entitled to transfer his certificate to another

1. Failure to get commission consent voids a transfer, it was held in *Re Pickard* (Calif.), P. U. R., 1927C, 402-3. This applies also to operators who secured certificate on affidavit. *Gilmer v. P. U. Com.* (Utah Supreme Ct.), 247 Pacific 284.

2. *Bus Age*, April, 1927, 47.

3. *Re Wedgewood*, P. U. R., 1922C, 171.

4. Rosenbaum and Lilienthal in *University of Cincinnati Law Review* May, 1927, 315.

5. P. U. R., 1922C, 131.

person, it was early ruled;⁶ instead, the commission is justified in suspending the certificate indefinitely. Such a situation today would in all probability lead to a prompt cancellation of the certificate. In this case was also involved the legality of the assignment of a certificate to a bank without the commission approval.

On the ground that the assignee was not the real party in interest and that consent of local authorities had been given to only one member and not to the company as a whole, the New York commission refused to transfer a certificate from a company to one member thereof.⁷ Where a certificate stated that no transfer or assignment could be made except by commission approval, the transfer of a share in the certificate from one partner was declared within the scope of the prohibition.⁸ The same commission denied transfer of operative rights conferred by a certificate because part of the operative rights had already been abandoned.⁹

A petition of Plaza Stage, Inc., seeking transfer to itself of a certificate previously granted to Plaza Stages, a copartnership, was refused by the California commission on the ground that a previous decision had ordered all transportation companies either to own or lease the needed equipment for a definite amount per trip or period of time, which condition the company apparently had not met. A second ground was that neither public interest nor administrative policy benefits from allowing transfers to a company the members of which would have to pay a per day fee for the privilege of operating under the firm name and jurisdiction.¹⁰

Transfer to a financially irresponsible party is not a valid exercise of the commission power, the Ohio supreme court has

6. *Re California National Bank of Modesto*, P. U. R., 1921D, 486.

7. P. U. R., 1920A, 336.

8. P. U. R., 1922A, 864.

9. *Re California Transit Co.*, P. U. R., 1922D, 284.

10. *Plaza Stages (Calif.)*, P. U. R., 1919E, 243.

ruled.¹¹ On October 14, 1927, the Indiana commission refused to recede from its former position denying transfer where it was dissatisfied with the financial transactions involved.¹²

The matter of signature to the application for authority to transfer the certificate has appeared in a few instances. The holder of the certificate must sign it in California,¹³ and similarly in the same jurisdiction all the members of the partnership must sign the application, although one partner may have taken little active interest in the business. To do otherwise would violate the state civil code.¹⁴

But those who have secured certificates from the commission and later transferred them to a corporation cannot seek from the commission consent to transfer them to a third party, despite the fact that meantime the court has reversed the commission order authorizing the first transfer, "the operative date of the judgment being set at a future time for the purpose of permitting the corporation to repair its financial structure."¹⁵ Not the would-be recipient of the transferred certificate is to sign the application, but he who holds the certificate, has ruled the Colorado commission.¹⁶ The Indiana commission grants transfers on petition of both parties.

With the application for transfer before it, the Ohio commission may investigate any phase of the matter relevant to the subject in hand.¹⁷

In a proceeding to transfer a certificate the question of public convenience and necessity cannot be raised since that question has been settled in the hearing granting the certificate, ruled

11. *Pa. R. R. Co. v. P. U. Com.*, 116 Ohio St. 44.

12. *Bus Transportation*, November, 1927, 658.

13. Note 4.

14. *Re Monzie v. Teter*, P. U. R., 1923B, 212. But in Colorado signature of all partners is not necessary to the petition asking authority to transfer if all partners appear at the hearing and urge the transfer. *Re Kidd*, P. U. R., 1928A, 771.

15. *Re Albery (Ohio)*, P. U. R., 1927D, 726.

16. *Re Miller Transfer Co.*, P. U. R., 1926D, 501-3.

17. Note 11.

the Indiana commission.¹⁸ The Colorado commission has taken a similar view;¹⁹ but in another case it has gone further to state that if public convenience and necessity as a basis of the certificates is to be attacked, this must be done by direct action to revoke the certificate.²⁰

In New York, it is not necessary to produce the certificates before the commission to secure commission consent to transfer thereof, provided the original route is to be followed by the recipient of the transferred certificate.²¹

The Ohio law provides that the partner or heir of an operator who dies may continue to operate under the certificate so long as the certificate continues, and may on commission approval transfer it. Except in case of transfer of certificate to heir or partner acquiring assets of partnership ended by death of one member, certificates can be transferred in Ohio only by consent of commission after a public hearing has been held on the matter.²²

In Ohio the decision has been reached that the commission has no power to authorize the transfer of part of the privileges conferred by a certificate, but that all or none must be transferred.²³ A similar position has been taken by the Indiana commission.²⁴

In transferring a certificate of convenience and necessity does a property or cash value attach to the certificate? This important question has arisen in five of the leading states. The sale of operating rights of a certificate holder is not to be approved when to do so will result in patrons paying rates high enough to enable the recipient of the certificate to pay an amount of money for the certificate, the California commission ruled in 1922.²⁵ In

18. *Anderson Bus Corporation*, P. U. R., 1926B, 832.

19. *Re Interstate Bus Lines*, P. U. R., 1927C, 395.

20. *Re Colorado Motor Way*, P. U. R., 1927B, 569.

21. *Re Seymour*, P. U. R., 1927C, 402-3.

22. *General Code*, 614-87a.

23. *Re Price Motor Trucking Co.*, 3984 Pub. Utils. Com. 1926.

24. P. U. R., 1927C, 402-3.

25. *Re Clark*, P. U. R., 1927D, 494.

the same year the commission of this state refused to allow transfer of an auto freight line, where the sum of \$6,000 was involved for operating rights alone.²⁶

Illinois has "gone very far in creating and protecting property rights in holders of certificates," although the statute forbids any construction of the certificate as conferring an exclusive privilege or monopoly.²⁷

Certificates have been considered as conferring property rights in Indiana. The commission in December, 1925, decided that under the state law governing the issue of certificates, the recipient acquires therein a property right which he may not only transfer but also sell if he wishes.²⁸ In this case the commission laid down the principle that it will approve the sale of certificates when it is shown that the purchaser will give the same or better service and the purchaser is financially able to furnish the service. But it appeared that the commission does not favor high valuation on certificates;²⁹ its refusal to approve a transfer on which a "going concern" valuation of \$241,000 in a deal of \$500,000 was proposed has been reversed by the court which ordered the commission to approve the transfer.³⁰

Twice in the last two years has the New York supreme court passed upon this question. In *Colonial Motor Coach Corporation v. City of Oswego*,³¹ it was held that a city ordinance conferring authority to operate buses on the streets whether a franchise or not becomes a contract, confers property rights, and in absence of specific authority to revoke, it cannot be revoked without due process of law, in spite of the Transportation Law and the Railroad Law. It follows from this that property in the permit is protected, and that the certificate is not revocable at the whim

26. Re Louis Sposito, P. U. R., 1922E, 535.

27. Leo T. Parker in *Bus Transportation*, June, 1927, 318-20.

28. Re Anderson Bus Corp., P. U. R., 1926B, 832.

29. See *Bus Transportation*, May, 1927, 290.

30. *Ibid.*, November, 1927, 658.

31. 215 N. Y. Supplement 159.

of the granting authority. Substantially similar grounds was taken by the same court in *Bohl v. Schenectady*,³² and a more definite statement was made relative to the property nature of the certificate: It is more than a revocable license, it is a grant of a property right which possesses all the characteristics of property and once accepted and acted on cannot be revoked; it is assignable by holder unless assignment is forbidden, and the city council has not seen fit to so forbid. The amount representing "good will" of the business in this transaction was \$5,500.

The Ohio supreme court on March 3, 1927, handed down a decision of an entirely different tone in *Pennsylvania Railroad Co. v. Public Utilities Commission*.³³ The utilities commission had approved the transfer to Buckeye Service Company of eleven certificates held by eight persons. The value of equipment involved had been placed at \$59,700, three of the transferring parties not including any equipment. The total consideration for the business involved had been agreed on as \$187,000. The difference of \$127,300 represented the value of privileges granted by the certificates. The chief points made by the court in reversing the commission order are:

1. Repeatedly has this commission indicated that a certificate is granted to promote public convenience and not to benefit the grantee by conferring on him any proprietary right in the highway.³⁴
2. The certificate aims to restrict the number of operators on the same route so as to produce as little inconvenience as possible to the public using the highway, and to protect carrier against such competition as would render him unable to furnish proper service.

32. 220 N. Y. S. 349, decided March 5, 1927.

33. 155 N. E. 694.

34. The court cites its previous decisions in *Estabrook v. P. U. Com.*, 147 N. E. 761; *Westhaven v. P. U. Com.*, 147 N. E. 759; *Hogan v. P. U. Com.*, 148 N. E. 581.

3. Since certificate is granted to promote public convenience and necessity, no going concern or good will value attaches to the certificate.
4. The fact that buyer of the certificates agreed to pay the holder an amount far in excess of the value of the equipment, is sufficient evidence that he is paying the difference for certificate privileges. This excess would be an additional burden to the service, and would eventually be paid by the public.
5. The order of the commission so authorizing is "unreasonable and unlawful" unless it be shown that "it is not the design or the purpose to credit the capital assets of the purchasing motor transportation company with the excess sum so expended, and that such excess will not affect the solvency of the purchaser."

Ruling that revoking a certificate for violation of the terms thereof violates no contract or property right, the Massachusetts supreme judicial court in 1928 seems to accept the privilege nature of the certificate so strongly emphasized by the supreme court of Ohio.³⁵

These cases show much variance as to the property nature of the certificate. Illinois, Indiana, and California reveal marked tendency toward the certificate as conferring property rights of business operation; but they have not taken the extreme view held by New York relative to the irrevocability of the certificate, or to its absolute property nature.

The doctrine expressed by the Ohio supreme court puts the stress on public interest and not on private property. The purpose of the highway is to promote public welfare; this general principle is universally accepted if not practiced. The financial contribution which has been made and is being made by the motor carrier to cost of road construction and maintenance is not yet very significant.

35. *Roberto v. Commissioners of Pub. Utils.*, 160 N. E. 321.

significant; credulous indeed is he who anticipates a radical departure from the present method of financing highway cost—private car owners and general taxpayers will continue to bear the burden of cost. So long as such a situation obtains, the highways will continue as public property in fact as well as in theory. For these reasons the position of the Ohio court in rejecting the view that property rights attach to the privileges conferred by a certificate is highly commendable from the viewpoint of public interest and admirable from the viewpoint of public administration.³⁶

Consolidation is the keynote of motor carrier development. This is only a repetition of the trend which has characterized the last half century of our industrial life in general as well as the public utility field in particular. Much of the transferring of certificates is done to effect consolidation. This consolidation is not at all limited to any particular section.³⁷

In 1925 there were in the United States some 8,500 motor carriers; on January 1, 1927, there appeared to be 7,215 operators.³⁸ Not all operators disappearing in this period did so by consolidation—many became victims of financial failure. While making allowance for those who failed, we must take into account the fact that some—perhaps many—new operations were authorized. The figures given and their consideration in view of the fact that some operators made their exit and other their initial appearance, indicate the extent to which consolidation is taking place. The longest end-to-end consolidation reported for the first half of 1926 was that of the lines between New York and Miami. On July 1, 1921, there were on file with the California agency 870 tariffs; merging is largely responsible for the re-

36. For a defense of the "good will" principle, see Leo T. Parker, in *Bus Transportation*, June, 1927, 319.

37. See, for example, *Motor Coach Transportation*, Sept. 1926, 12; *Bus Age*, April, 1927, 41; *National Municipal Review*, Sept., 1927, 570. The information of the American Motor Transportation Co. around the California Transit Co. as a nucleus has brought under a single management bus service from the Atlantic to the Pacific. *Bus Transportation*, June, 1928, 353. See also *New York Times*, Sept. 12, 1928, 1.

38. *Facts and Figures*, 1927, 80.

duction of this number to 670 by July 1, 1924.³⁹ This tendency to consolidate was one of the most evident facts brought out by the regional hearings conducted by the Interstate Commerce Commission in the autumn of 1926.

Among the causes of consolidation of motor carrier interests are found the entrance of skilled transportation men into the field, the desire for larger credit and buying power, and the opportunity afforded for more effective protection of motor carrier industry, economic and legal.

Nor have the results been disappointing to those bringing about consolidation. Consequent advantages⁴⁰ effected include better credit, larger buying power, more desirable and efficient maintenance facilities, ability to secure higher calibre personnel, greater utilization of equipment, better equipment, more coordination of service and extension thereof, lessened overhead, decreased competition, and greater financial stability of carrier.

A glance at this list reveals advantages which have redounded to the public good. So long as consolidation is helpful to public interest it should be not only permitted but even encouraged. The process of consolidation should be carefully safeguarded so as to prevent its becoming detrimental to public interest. Flexibility of the law on transfers and seriousness and intelligence of the administrators—here as elsewhere—are indispensable to the realization of a proper program of consolidation.

39. Auto Stage Department of Railroad Commission of California, *Annual Report*, 1923-4, 4-6.

40. See C. W. Stocks, Editor, in *Bus Transportation*, Feb., 1927, 61; *Motor Coach Transportation*, Sept., 1926, 12; and reference in note 38.

CHAPTER 12

REVOCATION OF CERTIFICATE

A usual companion to the commission power to grant a certificate is the authority to modify or revoke it. This has been recognized and provided for by statute in twenty-eight states. To inquire into the causes of and procedure in revocation is the purpose of this chapter.

One group of states provide by statute that the commission may revoke for violation of the regulatory act or of any valid order, rule or regulation of the commission. Michigan¹ and South Dakota² represent this group. In a second group of states the statutory basis for revocation is "good cause" as determined by the commission. Here we find Ohio,³ California,⁴ Louisiana,⁵ and Oklahoma.⁶ Wilful violation of or refusal to observe valid orders or rules or regulations of the commission constitutes statutory ground for revocation of certificate in a third group of states represented by Washington,⁷ Mississippi,⁸ and Minnesota.⁹ The Virginia and South Carolina laws confine revocation to the causes specified in the acts themselves.

Commission interpretation of the provisions of the statute gives much light on the causes of revocation and the commission rules and regulations often announce basic grounds for revocation.

Failure to observe proper filing procedure has led to subsequent revocation of the certificate in Ohio; the commission in view of discovery that proper application had never been filed, and that

1. Public Act 209, 1923, Sec. 6.

2. House Bill 118, 1925, Sec. 7.

3. *General Code*, 614-87.

4. Auto Stage and Truck Transportation Act as amended 1917, Sec. 5.

5. Act of July 15, 1926, Sec. 4.

6. House Bill 341, 1923, Sec. 4.

7. Ch. 111, *Laws of 1921*, Sec. 3.

8. Sen. Bill 125, 1925, Sec. 5.

9. Ch. 185, *Laws of 1925*, Sec. 4.

publication of notice had not been given, cancelled the certificate.¹¹ In so doing, the commission emphasized the decisions of the state supreme court stressing the necessity for compliance with these procedural requirements in securing a certificate. The South Dakota commission has revoked a certificate for the same reason.¹²

Making false statements in affidavits by apparently bona fide operator at effective date of regulatory act has proved a cause of revocation in Ohio. The interesting case of the Columbus and Zanesville Transportation Co. was decided by the commission August 16, 1927.¹³ This carrier had secured a certificate on affidavit that it was a bona fide operator on April 28, 1923, on which date the Ohio regulatory act became effective. The competing carrier complaining to the commission secured a hearing on the case of the above transportation company; the result of which was to discover that (1) the carrier, an organization of five persons, started service April 6, 1923; (2) they filed with the secretary of state articles of incorporation on April 10, 1923; (3) they filed affidavit with the commission that they were in bona fide operation on April 28, 1923; (4) and on April 30, 1923, filed their certificate of subscription. The commission ruled that the opening of the subscription books on April 30, 1923, was too late to bring the operator under the statutory provisions for certificate on affidavit; that incorporation had not been completed on effective date; that the affidavit was therefore false. Consequently, the certificate was cancelled. While an appeal to the state supreme court has been taken, the effect of this commission decision will inevitably be to emphasize proper adherence to fact, even in motor carrier service. Here a business of four years' duration was declared without legal foundation.

A similar situation arose in Washington in 1922. Here, according to allegation of complainant, the applicant had made false

10. *Youngstown & Suburban Transportation Co. v. Warren-Salem Coach Line Co.* Decision 4750, August 13, 1927. See P. U. R., 1927E, 627.

11. *Re Clarence Linden*, P. U. R., 1926D, 787, decided June 21, 1926.

12. See *Bus Transportation*, October, 1927, 597.

representations that he was operating in good faith. The commission investigated, and ordered a hearing, against which ordering and holding of hearing the holder of the certificate under investigation sought a writ of prohibition. The commission revoked the certificate, and the court dismissed the petition for writ of prohibition. On appeal, the Washington supreme court affirmed the decision of the lower court upholding the commission power to cancel certificate secured on false representation.¹³

Defaulting in regard to the requirements for liability protection has proved ground for revocation. The Utah commission has held as cancelled and annulled all privileges real or supposed relative to operating a bus line of some nine years standing because the carrier had failed to provide liability protection as required by law. The commission left to the existent operator the privilege of transporting freight, but his privilege of transporting passengers and express was by a new certificate conferred upon one Bartholomew.¹⁴ In this case was involved also the failure of complained-of carrier to pay lawful tax until after the application for certificate had been filed by Bartholomew. This decision signifies that violation of law and regulations is not to be winked at in Utah.

Failure to file insurance bond has constituted grounds for revocation in three cases in Rhode Island.¹⁵

In California failure to establish authorized service within a reasonable time has resulted in revocation of certificate. The certificate to begin service had been granted on February 5, 1920, and as late as May 18, 1922, no service had been inaugurated; two days later the commission revoked the certificate.¹⁶ The certificate holder in this case has since developed into the largest motor

13. Knowles v. Kuykendall (Wash.), 210 Pacific 666. The South Carolina Act of 1925 specifically makes misrepresentation a cause for revocation.

14. Re Jesse L. Bartholomew, P. U. R., 1927B, 50.

15. Re Abbott, decided May 12, 1926, and Re Adams, decided June 9, 1926: revocation for failure to file bond within 60 days in Re Intercity Coach Co., P. U. R., 1928A, 657.

16. Re Pickwick Stages, Northern Division, P. U. R., 1922E, 536.

carrier in California and possibly in the world. Failure to start service within the period specified has figured as a cause of revocation in Rhode Island; and proved the basis for revocation in Louisiana.¹⁷

Defaulting in the obligation to furnish "regular and dependable service in accordance with approved rates and time schedules" led the California commission to revoke a certificate.¹⁸ Omitting part of its schedule in order to make trips elsewhere entered into "good cause" for revocation as declared by the Ohio commission and upheld by the state supreme court.¹⁹

Violation of safety requirements as prescribed by the commission was the other reason for revocation in the case mentioned in the preceding paragraph. One of the passenger vehicles used was in such mechanical condition as to amount to a positive menace to patrons. Despite state requirements, it was operated without brakes, spare tire, or proper lighting system, and was equipped with a "defective" speedometer. Continued operation of the vehicle in this condition revealed neglect on part of the carrier.²⁰

Not observing that clause in the certificate requiring commission approval for equipment used or leased by recipient was adjudged damaging evidence leading to revocation in California.

Carrying passengers contrary to the restrictions specified in the certificate has proved fatal to a certificate in New Jersey. Accepting local passengers in violation of the certificate caused the employment of special paid investigators by competitor to check up on the violator. At the hearing other testimony also was introduced; the commission ordered cessation of service on the

17. Note 15. Service authorized in Kentucky must be inaugurated within 60 days. This provision of the law aims to prevent "pre-emption" of routes until more favorable financial circumstances permit the establishment of service. For the Louisiana case, see *Ex Parte Vincent*, P. U. R., 1928C, 12.

18. *Re Boyle*, P. U. R., 1922A, 859.

19. *Solt v. Pub. Utils. Com.* (Ohio Supreme Ct.), 150 N. E. 28; P. U. R., 1926D, 636.

20. *Ibid.*

21. Note 18.

route involved.²² Revocation in California has resulted from operator's violating the terms of his certificate authorizing the transportation of butter and cream; he carried freight also and despite his plea that he was not aware of violation, the commission cancelled his certificate, and admonished motor carriers to inform themselves concerning the legal requirements.²³

Conviction for violation of national and state liquor laws has led to the revocation of a certificate in dry Arizona.²⁴ The carrier forfeited his certificate for being convicted of having one-half gallon of whiskey in his possession.

Financial practices which amount to rebates constitute cause for revocation in California.²⁵

Suspending operation without notifying commission or securing its consent is in effect abandonment of the operating rights conferred by the certificate, and the certificate was revoked. Testimony was introduced that there had been no operation between September 12 and February 12 following; the defendant did not appear at the revocation hearing.²⁶ Suspension of service for ten days continuous is valid cause for revocation in Michigan, but if the carrier can show that he was not at fault in the discontinuance of service, he must be allowed to resume service, if the commission deems such demanded by public convenience and necessity.²⁷

Abandonment of service leads to cancellation of certificate, has been ruled in California.²⁸ Likewise, abandoning a part of

22. See *Bus Transportation*, May, 1927, 298.

23. *Re Huffman*, P. U. R., 1922E, 750.

24. *Re Phoenix-Superior Truck Line*, P. U. R., 1922D, 608.

25. *Re Lingo Bros.*, P. U. R., 1925A, 272.

26. *Nelson v. Haley* (Calif.), P. U. R., 1922D, 86. Where certificate holder has not operated for a year, has left the state, and notified the commission of his inability to perform the service, his request later that the commission approve the transfer of the certificate is invalid, and commission cancelled the certificate. *Re Frank Hart* (Colorado), P. U. R., 1927E, 727.

27. *Michigan Public Utilities Commission, Rules and Regulations*, Rule 21.

28. *Monzie v. Teter*, P. U. R., 1923B, 213.

route certified.²⁹ Carrier here had operated about twice a month and that on call; such infrequent operation was equivalent to abandonment. This decision is in line with the principle laid down in 1922 that abandoning service on part of the route makes subject to revocation all the privileges conferred by the certificate.³⁰ This abandonment doctrine has been accepted in Arizona.

The fact that buses did not operate throughout the winter while trains did, thereby transporting milk, timber, and mineral, the economic products of the community without which transportation the community would be severely affected, constitutes public convenience and necessity demanding the protection of the railway by the revocation of the bus certificate authorizing a parallel bus route.³² In Pennsylvania revocation has been justified on the ground that public convenience and necessity no longer demanded the motor service.³³

Failure to have drivers licensed entered into the revocation of a certificate in Rhode Island,³⁴ and in Michigan it was announced that repeated reckless driving will result in revocation. Not having the vehicles inspected has proved a ground for revocation in Rhode Island.³⁵ Likewise was adjudged the violation of court order directing the carrier to revert to the use of the equipment specified in the certificate.³⁷

Default in the payment of taxes is one of the most common causes of revocation. Colorado sees as a cause of revocation the failure to pay taxes or to report monthly the mileage traveled.

29. *Re J. R. Martin*, P. U. R., 1927A, 88.

30. P. U. R., 1922D, 290. On this matter of revocation for abandonment as ruled by the California commission, see further Decisions 1007, 11151, 15168, 6933 and 11555.

31. *Re Dickinson (Ariz.)*, P. U. R., 1926C, 343.

32. *St. Johnsbury & L. C. Ry. v. Cent. Vermont Ry.*, P. U. R., 1926E, 709.

33. *Rosenbaum and Lilienthal in Pennsylvania Law Review*, June, 1927, 718-19.

34. *Re Adams (R. I.)*, decided June 9, 1926.

35. *Rules and Regulations*, Rule 36.

36. *Re Abbot*, decided May 12, 1926.

37. *Sciota Valley Ry. & Power Co. v. Pub. Utils. Com.*, 157 N. E. 477.

38. *Re Bill's Sightseeing Co.*, P. U. R., 1928A, 775.

The statute sometimes announces revocation as the penalty for non-payment of taxes. Where an Ohio carrier failed to pay the tax and the charter was cancelled by the secretary of state, it was held by the utilities commission when petitioned by the competitor to cancel the certificate of the defaulter, that cancellation of the charter and failure to re-instate it in the time allowed by law automatically cancelled the certificate; the commission dismissed the petition on the grounds that there was nothing left to revoke.³⁹ During the year 1926 three or four hundred certificates were cancelled in Ohio. Many of these were revoked for failure to pay taxes; this is the one cause stressed by the commission in discussing revocation.⁴⁰

In two cases the Ohio supreme court has held that a certificate granted on affidavit of bona fide operation on effective date is revocable on the same grounds as if it had been issued on a basis of public convenience and necessity proved.⁴¹

But not all the petitions for revocation of certificates have been granted. Where a bus served a village four miles from a railway station, and the loss suffered by the railway to the bus was slight, the commission refused to revoke the certificate.⁴² The certificate of a carrier who had made every effort to maintain his published schedule of service despite heavy snows, the commission concluded, should not be cancelled for his failure to keep up a perfect schedule.⁴³ Failure to transport only such goods as authorized in the certificate was insufficient grounds for revoking the certificate where to do so would leave the transportation of the authorized goods in the hands of an uncertificated carrier.⁴⁴

39. Canton-East Liverpool Coach Co. v. Minerva Transit Co., P. U. R., 927D, 729.

40. Conference with Secretary J. B. Dugan, July 26, 1927.

41. *Schieble v. Hogan*, 113 Ohio St. 83; *Cincinnati Traction Co. v. Pub. Utils. Com.*, 150 N. E. 308.

42. Vermont P. S. Com., P. U. R., 1926E, 701.

43. Re Dodge Stage Line, P. U. R., 1922D, 785.

44. Re Kidd (Colorado), P. U. R., 1928A, 771.

The most extreme position has been taken by the New York supreme court relative to revocation of the certificate. This tribunal has ruled that state authorization to operate motor service, whether it be called permit or certificate, is property, and that it cannot be revoked during the life of the certificate.⁴⁵

As an indication of the causes of revocation in a particular state, Pennsylvania can be used as an illustration: Copying the coloring scheme used by another carrier; failure to operate for an extended period; failure of carrier to appear at hearing and give testimony against a petition for revocation of his certificate; and the fact that carrier's service is no longer demanded by the public.⁴⁶

In its second regulatory act, the North Carolina legislature in 1927 sets forth the ten new commandments, the violation of any of which will produce revocation of certificate granted the carrier: (1) Not paying his share of union station rents; (2) not providing tickets for passengers at stations designated by the commission; (3) violation of commission regulation on the checking of baggage; (4) not keeping equipment in safe and sanitary condition; (5) operating any vehicle for which no certificate has been granted; (6) violation of insurance requirements; (7) deviation from rate and time schedule approved by and filed with the commission; (8) unauthorized changing of number plate of vehicle; (9) conviction for violating any criminal law of the state which in discretion of the commission disqualifies carrier from giving authorized public service; and (10) violation of any law, rule, or regulation governing the use of motor vehicles on the highway.⁴⁷

In twenty-three states the regulatory statute has given at least passing attention to the procedure to be observed by the commission in revoking a certificate. Seventeen of these prescribe

45. *Colonial Motor Coach Co. v. City of Oswego*, 215 N. Y. S. 159, affirmed in 217 N. Y. S. 907.

46. Note 33.

47. Senate Bill 630, Session Laws 1927, Sec. 10.

notice and hearing as essential preliminaries. Notice at least five days in advance is necessary under the statutes of Kansas, Ohio,⁴⁸ and West Virginia. "Due notice" is specified in Louisiana and Massachusetts, and "reasonable" notice in Oregon.

While providing for revocation, the statutes of Connecticut, Maine, and Idaho appear silent as to notice and hearing; the Vermont act does not expressly state that notice and hearing are essential preliminaries, but seems to imply as much. The Indiana statute allows the commission to rescind any order relative to rates, schedules "or any other order of the commission," which latter phrase would easily include the revocation of certificates. The matter of notice and hearing seems left entirely to the discretion of the commission.

Complaint seeking revocation (as for other relief) need not be made out according to any definite form in New York,⁴⁹ but in Colorado and California a particular form is prescribed. The Colorado⁵⁰ form resembles closely that of California,⁵¹ and requires information as to name and address of complainant and of complained-of carrier and of attorney for the complainant, a definite statement of facts on which the complaint is based, reference to exact section of the statute involved, if any, and verification of complaint. The complainant must furnish a copy of the complaint to the commission, and serve a copy on the defendant. If the defendant is willing to grant relief, he so signifies to the commission, who in turn notifies the complainant. Should the latter not accept the relief offered by defendant, then the case is brought on for formal hearing and disposition by the commission.

In providing for the revocation procedure, some of the statutes, those of Minnesota, Mississippi, South Dakota and Washington,

48. This five days notice and opportunity to be heard has been upheld by the Ohio Supreme Court in *Schieble v. Hogan*, 148 N. E. 581, and again in *Cincinnati Traction Co. v. Pub. Utils. Com.*, 150 N. E. 7.

49. New York Public Service Commission, *Rules of Practice*, Rule IV.

50. Colorado Pub. Utils. Commission, *Rules of Procedure*, Rule 11.

51. California Railroad Commission, *Rules of Procedure*, Rule 11.

for example, specify that appeal and review shall not be denied on the commission decision revoking the certificate. Of course this is only in keeping with the usual doctrine of judicial review of acts of administrative agencies.

In summary, it can be stated that among the causes of revocation of certificates are found errors in procedure; failure to provide liability protection; false statements in affidavits; failure to establish within the period allowed the service authorized, and failure to furnish proper service either in amount or frequency; violation of safety requirements; failure to secure commission approval of equipment leases; failure to observe certificate conditions as to passengers carried or goods transported; rebates; suspension or abandonment of service; failure to have drivers licensed, and failure to pay taxes due.

The legal restrictions placed on revocation of certificates making easy or difficult the revoking affect vitally the certainty of certificate tenure, and this in turn likewise influences the financial side of improvement of service. Statutory provisions which allow revocation on slight and petty pretexts do not invite investing capital to the industry; an irrevocable certificate offers no protection to the public.

CHAPTER 13

MOTOR CARRIER AND RAIL CARRIER

Of primary social and economic importance is the relationship between the motor carrier and the rail carrier. The motor carrier shows a powerful tendency to compete with the rail line, electric or steam, wherever traffic has already developed, as well as to develop new lines of traffic itself. Such an inroad has been made by the motor carrier that a good deal of uneasiness is felt by the rail carrier.¹

What are the specific complaints made by the rail carrier against the motor carrier? The basic general objection, and one from which many others arise, is that severe financial loss is resulting from the drawing off of rail freight and passenger revenues. The complaint may be so mild as that the motor carrier is not charging a living rate for himself and is thereby attracting the traffic, with possible plans for establishing a business which ultimately will prove profitable. Or the objection may rest on the charge that motor service is not so permanent or reliable as that offered by rail. Where year round service is not furnished or liability guarantee is not required there is a valid basis for this

1. For this chapter I have used such special sources as A. J. Brosseau, vice-president, Mack Trucks, Inc., "The Field of the Motor Bus," an address before the Bus Division Annual Meeting at Philadelphia, June 15, 1927; J. E. Slater, "A Study of the Motor Bus as a Competitor of the Railroads," in *Journal of Land & Public Utility Economics*, April, 1926, 125-55. C. S. Duncan, economist for Association of Railway Executives, *Motor Bus and Truck Operation*, a report on ten of the regional hearings held by the Interstate Commerce Commission in late 1926 to determine the relation between the motor carrier service and the rail carriers; Highway Transport Committee of the American Section, International Chamber of Commerce, *Highway Transportation* (Washington, May 4, 1927); Bus Division, *Bus Facts for 1927*; *Ibid.* 1928. National Automobile Chamber of Commerce bulletin, and its pamphlet, *Facts and Figures of the Automobile Industry*, 1927; *Bus Transportation*, July, 1927; *Bus Age*, April, 1927, and May, 1927; reference has been had to the digests of several of the I. C. C. hearings. Indispensable to my study has been Interstate Commerce Commission Docket 18300, a symposium of data relative to competition between motor carriers and steam lines and extent to which steam lines have resorted to the bus.

attack. Or the rail complaint may be that the motor carrier cannot compete with the rail line on an equal economic basis. At the regional hearings conducted by the Interstate Commerce Commission last year evidence was introduced to the effect that this objection is well-founded.² Complaint has been made that motor service is not required according to a schedule; or that the average bus is uncomfortably cold in winter.³

A particularly bitter complaint very frequently registered by the rail carriers is that they have to pay taxes to keep up the roads used by the motor carrier competing with the rail carrier. Thus the rail line sees itself paying out money to help deplete its own revenues and defeat its own business. This appears the most serious complaint made by the rail lines against the motor carrier. A typical protest against such a situation is seen in the widely-used slogan of a well-known electric railway in central Ohio: Are the Highways Paid For By Those Who Use Them? From the rail viewpoint, it is gross injustice to require a transportation agency furnishing its own track to pay heavily for maintenance of highways used by the motor carrier engaged in competition with the rail line.

These protests may be registered by the rail lines themselves, or by commercial bodies such as chambers of commerce.⁴

Before taking up the ways in which the motor carrier is competing with the rail lines, let us inquire into the reasons why it is competing successfully. This involves a consideration of the relative advantages offered by each type of service.

First, there is frequency of service. Here the advantage is clearly with the motor carrier, operating in smaller units and consequently at less cost. Secondly, reliability of service. Al-

2. Duncan report, 10. See particularly the testimony offered at the Dallas hearing by Don C. Saunders; also Slater article written before the hearings were held.

3. Re Aldrich (N. Y.), Public Utility Reports, 1923A, 385.

4. See N. A. C. C. pamphlet answering the Santa Ana, California, Chamber of Commerce protest against the bus charging less than the rail carrier because the bus uses the highway already built.

Although much progress has been made toward giving year round motor service, the operation is in some sections seasonal. On the score of dependability, the advantage is emphatically with the rail line. As to speed, where the run is 20-40 miles, the bus can be depended on to cope with the local train. But runs greater than 40 miles with few stops to make can be made quicker by train. Especially has this been demonstrated between Boston and Providence.

Fourthly, comes the question of comfort to the passenger. Bus designers have been quick to see the advantage of vehicles designed to offer the greatest possible comfort to the passenger. The difference between the pioneer "wagon" type and the de luxe coach today marks no mean development, but it has been realized in a really short time. The average bus compares favorably with the typical equipment used by railways on branch lines in point of comfort, a point at which the de luxe coach is competing successfully with the higher type of passenger equipment used on main rail lines.

Fifthly, in that the bus more nearly completes the trip for the average passenger, calling nearer his door and delivering him likewise, the bus is far ahead of the rail carrier in regard to convenience. The fact that a bus is not limited to tracks makes the extension of a bus line easy and quick as compared with a rail carrier.

A seventh consideration is the directness of route. This is especially important in interurban traffic where sometimes a three-hundred mile rail trip can be abbreviated into a hundred mile motor route. The saving in time is not to be ignored.

The above advantages adhere particularly to the passenger motor service. Some of them apply as well to property motor transportation. Advantages peculiar to this motor truck service include elimination of crating and packing the goods to be shipped, pick-up and store-door delivery, elimination of transfer points with rehandling, and the prompt filling of emergency orders sent

from a nearby point. Combine these advantages of the motor service with such special considerations as that the bus often goes through a more attractive section of the city than does the rail line, that the bus tends to satisfy the present day craze to ride on rubber, and that the bus by virtue of its being a relatively new mode of transportation presents some element of adventure and you there have the working reasons why the motor carrier is able to put up such hurtful competition with the rail lines. There is ample and growing evidence that commissions are recognizing these advantages of motor service.⁵

For at least three reasons it is difficult to determine the extent to which motor carrier competition with rail lines exists. First, the failure of some carriers to comply with the law requiring certificates to operate, thus not being taken into account by the regulatory bodies. Secondly, the institution of service and the cessation of it are counter processes going on from day to day. Thirdly, the lack of a standard of determining what is a competitive line. But in spite of these limitations, some elements appear as guides in seeking evidence as to the extent of competition.

The first guiding element is the motor carrier mileage paralleling rail lines. In Massachusetts and Rhode Island more than one-half the railroad mileage is paralleled by motor lines, which logically prefer to follow the main rail lines. Substantially the same situation obtains in Connecticut. Excepting the Indianapolis region and a few sections on the Pacific Coast, there is more competition between motor and rail in southern New England than in any other section of the country.

By November, 1925, Michigan had established 164 bus lines, seventy-eight of which were wholly competitive with rail carriers.

5. The most recent cases evidencing this recognition are as follows: *Re Craig* (S. D.), P. U. R., 1928A, 110; *Re Middaugh* (Wash.), P. U. R., 1927E, 207; *Re Carleson* (Wash.), P. U. R., 1927E, 428; *Re Lilley* (Colorado), P. U. R., 1928A, 186; *Re Auto Transportation Co. Application* (Wis.), P. U. R., 1928B, 445; *Re Way* (N. Y.), P. U. R., 1927D, 305; *Re Chicago Motor Coach Co.* (Ill.), P. U. R., 1928D, 657.

and eleven partially so. In this state 2,680 miles of railroad is paralleled by motor lines; this is 31 per cent. of the railway mileage of the state. One railroad, the Pere Marquette, has more than 1,000 miles of its lines paralleled.

In the same year, Indiana showed 120 bus lines competing with railways along 3,000 miles of the latter's tracks. Practically every railway entering Indianapolis was paralleled by a competing bus line. Only one-third of the rail mileage in Iowa was paralleled by motor carriers. Railway mileage in Wisconsin was paralleled to a less degree than in Iowa, but fifty of the sixty-two bus lines authorized were competing with the rail carriers.⁶ In some sections, North Carolina, for example, bus service is reaching out into areas not served by rail carriers.

On a basis of replies made by the class 1 steam railroads of the country to a questionnaire sent out by the Interstate Commerce Commission, that body published in December, 1926, a digest showing the extent of competition between railway and motor carrier service throughout the country insofar as the number of vehicles used and the amount of competitive mileage are concerned.

In line service and operated by motor transport companies or individuals are 20,352 passenger vehicles, covering a bus mileage of 345,962. Most of these buses and mileage are found in the Central Western, Northeastern, Central Eastern, and Great Lakes regions.

Motor trucks operated in line service in competition with railway service are twice as numerous as are buses, there being 43,237 in operation. These competitive trucks cover a total mileage of 552,630, the average being slightly above twelve miles per truck. The Central Western, Great Lakes, and Central Eastern regions have about sixty per cent. of the competing truck mileage and seventy-five per cent. of the competing trucks found in the whole country.

6. For treatment of this matter in specific states, see Slater article.

Among the particular rail systems with which the motor carrier service is most keenly competitive, the New Haven heads the list. Of the 453 competitive buses in the whole New England region, 261 are competing with the New Haven. Along some sections of the route of this railroad four or five bus lines are found; between New York City and Bridgeport eight bus lines are offering service.⁷ It appears that at one time at least fourteen bus lines were operating between the above points.

Nor are the buses alone in harassing the New Haven. Of the 3,392 competing motor trucks in New England, 2,229, covering approximately five-sevenths of the competitive truck mileage, are contending with the New Haven.

Service actually furnished by the motor carrier is another index to competition. Frequency of service is a point on which the potential advantage lies with the motor carrier. Not only with rail lines where infrequent schedules are found is the motor carrier competing, but also with railways furnishing frequent service. According to Slater, the *Official Guide* for October, 1925, shows that in Massachusetts two-thirds of the railways paralleled by bus lines are furnishing ten trains daily, while in the Midwest the railway is offering from three to six trains daily. Between Cincinnati and Lexington the Southern Railway offers nine trains daily each way, and the Louisville and Nashville some two or three. In spite of this schedule, a short time ago there were operating two through bus lines and two "locals" at each end of the route. Train service offered by the Michigan Central between Ann Arbor and Detroit amounts to twelve trains daily each way except on Sunday when it is ten. Yet bus service has been authorized between the two points. These instances suffice to make clear that bus competition exists even where high class frequent train service is offered, and that competition is not limited to local and branch lines.

7. *Bus Facts*, 1927, map, page 15, shows the competitive motor bus lines in New England.

A situation in which frequency of service, running time, and cost of service as offered by a steam line, an electric railway and motor bus were involved is that between Dearborn and Detroit.⁸ Recently the frequency of service was by train two one-way trips daily; by electric, twenty-nine; by bus, sixty. The minimum schedule of the train, electric and bus, covering a distance of nine, ten, and twelve miles was eighteen minutes, forty-five minutes, and fifty-two minutes respectively. The one way cost was twenty cents each for the bus and electric and thirty-three cents for the train. The more frequent service tends to offset the longer distance and the longer running time of the bus, and helps explain popular preference for this type of transportation.

The cost of service is another point on which the motor carrier is able to produce trouble for the rail carrier. With less investment, overhead, and less operating expense per unit of equipment, the motor has a distinct advantage over the rail carrier whose operating unit is large and expensive. It is reported that the Boston and Maine Transportation Company has been able to furnish three times as much service by bus as the former train schedule afforded, and this at one-half the cost⁹ of train operation to the railroad.

According to different authorities, the cost of operating an ordinary passenger train varies from \$1.10 to \$2.02 per train mile.¹⁰ The cost of operating a 20-30 passenger bus is estimated at 20-30 cents per bus mile. Where there are only twenty-five passengers seeking transportation, the economic effects of the difference in the cost of operating the steam and motor units as indicated above assumes particular significance.

In some sections the motor carrier passenger rates are less

8. According to a table prepared by Director L. T. Macomber, Traffic & Transportation Division, Detroit Board of Commerce, and quoted in N. A. C. C. pamphlet, *Facts and Figures of the Automobile Industry*, 1927.

9. A. J. Brosseau.

10. Duncan, 7; N. A. C. C. pamphlet *61st Railway Now Substitutes Bus for Branch Line*; also Brosseau, 5.

than those charged by the railway. Around Indianapolis, about two cents seemed the rate not long ago. At least one line in Kentucky carries passengers at a rate of two and half cents. In Iowa recently the rates ranged from 2.4 cents to 6.2 cents, the average being 4.3 cents. But the riding public seems to give cost of service no more than secondary consideration in deciding whether to patronize the bus or the train. Service is the primary consideration.

There is even less of definite and comprehensive information regarding motor truck rates than is true of motor bus rates. The regional hearings brought out that truck rates range between freight rates and those charged for express.¹¹ The motor truck lends itself well to property transport requirements in that frequency can often be arranged to fit the particular case. When the haul is somewhat long but prompt delivery is required, the motor truck can be started out late at night arriving in time for delivery early next morning.¹²

To what extent has the motor carrier reduced the volume of business of the rail carrier? Again we have only meager data. The hearings revealed that the motor bus is responsible for from ten to twenty-five per cent. of the passenger traffic lost by the steam lines. The effect on the electric railway has been more serious. In sixty-five cities under 100,000 population, the bus has completely supplanted the street car, and in 197 cities partial substitution of the bus for street car service has been made. Some of the oldest and best established electric lines in the United States have succumbed to the paralyzing competition of the motor carrier.

11. Duncan, 7.

12. Testimony of Don C. Saunders at the Dallas hearing, Sept. 20, 1926. It is not an infrequent observation that property carriers are utilizing the highway when passenger traffic peak for the 24-hour period has passed. Flexibility of motor truck was very much emphasized in the hearings before the Senate committee on interstate commerce at Washington, March 22-23, 1926. See chapter on proposed Federal regulation of interstate motor transportation.

13. *Bus Facts*, 1927, 13.

The Interstate Commerce Commission Docket 18,300 (1926) found that forty-one per cent. of all bus mileage was directly competitive with rail lines and that a big portion of the remaining fifty-nine per cent. was indirectly competitive.¹⁴ The Illinois commerce commission estimates that in the last ten years steam lines have suffered a 30-40 per cent. loss in passenger business.¹⁵ But of course not all this is attributable to motor carriers.

The hearings revealed that the steam lines have suffered little freight loss to the motor truck, and that what has been lost has been primarily in intrastate movement.¹⁶ From ten to twenty-five per cent. of steam passenger loss is attributed to the motor bus. In the summer of 1927 five rail lines appeared in protest before the Missouri commission in its hearing on bus service between St. Louis and Kansas City. They stated that in the first five months of 1927 they suffered a 66 per cent. loss in passenger traffic. It was shown that the bus had in the last three years built up a considerable business. This fact showed public convenience and necessity demanded motor service, concluded the commission.¹⁷

Within what distance limits is motor service competing with rail service? We must consider bus and truck activity separately. It is fairly well accepted that from 100 to 150 miles is the maximum haul by the motor bus;¹⁸ this tends to expand, however; and the view is that the future of the bus lies in the zone under a fifty or seventy-mile maximum. A study of length of bus routes in eight representative states shows that 82.5 per cent. of the bus routes surveyed are less than forty miles long.¹⁹ But a few bus lines are offering much longer haul than the above figures indicate. Bus service exists between Chicago and Detroit, a dis-

14. Amos A. Betts, in P. U. R., 1928D₃, Special Section, 12.

15. Re Chicago & Joliet Transportation Co., *Ibid.*, 42.

16. *Bus Age*, April, 1927, 41; *Bus Transportation*, July, 1927, 379-81; also Duncan, 14.

17. *Bus Age*, October, 1927, 41.

18. J. E. Slater, Op. cit., F. J. Scarr, in *Bus Transportation*, July, 1927;

19. S. Duncan, in *Bus Age*, May, 1927, 39.

19. Study made by H. S. Trumbower, and cited in *Bus Facts*, 1927, 18.

tance of 237 miles; and Pickwick Stages offers service by bus from Seattle to El Paso, and plans extension to St. Louis and Chicago.

The hearings seem to have revealed that motor truck operations do not extend so far as those of the motor bus. From thirty to sixty miles appears as the maximum zone in which motor trucks are operating. But the hearings revealed some instances of 150-mile hauls, and that the thirty-sixty mile zone of truck operation tends to expand. The condition of roads, the character of the goods, and the proximity of markets and distributing points are the chief factors determining the length of truck haul.

For a time there appeared a feeling of indifference on the part of the rail carrier to the motor carrier; but in many sections the activity of the latter has so extended that the rail carrier has begun to take more seriously the presence and operation of the motor carrier. Sometimes seeing itself unable to compete with the motor carrier on short hauls and infrequency of service, the rail carrier has sought self-protection by establishing motor service in connection with the rail service.

In establishing motor passenger service in connection with its rail operation, the steam railroad has done so either through direct ownership and operation of the buses itself, through a subsidiary or through motor transport companies or individuals. Steam lines own only 225 buses according to the survey made by the Interstate Commerce Commission,²⁰ but it appears that with more recent ordering of equipment the number rises to 994. Sixty-four railroads have adopted the bus as a substitute for branch line operations.

20. Docket 18300, Washington, Dec., 1926. The chief rail lines to establish motor bus service in connection with rail service are New Haven Railroad, 168; Great Northern, 143; Union Pacific, 129; Boston and Maine, 61; See *Facts and Figures*, 1927, 75. Unfortunately, the Docket does not show the extent of competition between motor and electric service, or the extent to which the electric has turned to motor vehicles. For experience of the Boston and Maine Railroad in co-ordinating bus and rail service, see Article in *Bus Age*, August, 1928, 157, by H. F. Frisch, President of B. & M. Transportation Co.

Through subsidiaries, steam lines have in operation 314 buses covering a bus mileage of 2,392. More than half this number of buses and likewise half the mileage are found in New England. In the New England region the New Haven railroad has three-fourths of the vehicles and about five-sixths of the mileage operated by subsidiaries to steam lines. In many regions little or no resort has been had to the subsidiary motor transportation company. Motor transport companies and individuals operating buses in connection with rail service are using 1,253 vehicles covering 11,740 bus miles. Two-thirds of this equipment and also two-thirds of the mileage is found in the Pocahontas and Central Western regions.

Small as the steam line use of buses is, the number of motor trucks employed is yet smaller. There are forty-one trucks owned by the steam lines for line service; subsidiaries operate only twenty-six, five regions showing none at all. Through motor transport companies and individuals 226 trucks are operating over a mileage of 4,226.

The significance of these facts is that they indicate the small extent to which the steam line has adopted motor carrier service in connection with its own rail service. This in turn suggests that either the competition offered by competing motor carriers is yet insignificant in amount, or that the steam line is indifferent to the presence of the competing motor carrier. A safer conclusion is the former, that little serious competition is being given steam lines outside of the New England region.

Having suffered more from motor carrier competition, the electric line has discovered a possible way out by adopting motor service in connection with its rail service, even to the extent of substituting motor service for the whole system of electric operation.

When the time has come to buy new equipment or new rails, or to replace pavement, electric lines at that point have devoted serious attention to the adoption of the motor service. Three

hundred electric lines now use 7,284 buses. During 1926 around \$300,000,000 was spent by electric lines for equipment, and of this \$23,000,000 represented motor bus equipment.²¹ Electric lines in sixty-five cities have been supplanted by buses, and in some states of the Eastern and Midwest sections the interurban electrics have adopted the bus extensively if not with eagerness. In Ohio twenty-four electric lines are operating 656 of the 1,839 buses authorized in the state. Thirty-three lines in Pennsylvania operate 703 of the 2,346 buses, or slightly less than one-third the total number. Massachusetts shows thirty-six per cent. of the buses in the hands of the electric lines, while California reveals that 445 of the 2,440 buses authorized, or only fifteen per cent., are operated by electric lines, Mississippi shows no electrics operating buses, while in Michigan 1,281 of the 1,908 buses authorized are operated by electric lines. Of the 85,000 operated in 1928, exactly 8,492 are operated by electric lines and their subsidiaries.²²

The electric has been hard hit by the motor carrier competition, and has sought to provide itself with the same type of weapons as used by its adversary. Taking the United States as a whole, steam lines have put into operation through ownership, subsidiaries, and motor transport companies or individuals 1,792 buses, or fewer than the electric lines operate in the single state of Ohio. While the steam line has made little move toward the bus, the electric lines are using about one-tenth of all buses authorized.²³ The steam line bids fair to adopt the bus more extensively than it has done so far.

With the foregoing consideration of the relative advantages of the rail service and the motor service, and of the extent to which motor carrier competition has gone, we are now ready to inquire

21. A. H. Swayne, vice-president General Motors Corporation, in N. A. C. C. Bulletin, Oct. 21, 1926.

22. On this question see *Facts and Figures*, 1927, 81; *Bus Facts*, 1928, 7.

23. *Bus Facts*, 1928, 7. 35,000 buses are operated as school buses.

to the attitude of the regulatory bodies toward the two types of transportation agency and their interrelations.

There is a noticeable body of decisions to the effect that a rail line is not to be protected against the motor carrier competition, but that the rail carrier will have to depend on its own economic ability to defend its position. This does not mean, however, that regulatory bodies are hostile toward the rail carrier, but only that some of them feel under no obligation to protect the rail carrier against the motor carrier.

The chief plea on the basis of which the rail line has most often sought government protection is, of course, that authorizing motor carrier competition will have a serious financial effect on the rail line. From 1917 to the present time there has been a tendency, less discernible lately, to authorize motor service to compete with inadequate rail service despite the protests of the rail lines that this will mean financial ruin to them. Such authorization has not been confined to any particular section, but is geographically widespread. Serious financial loss to rail lines does not outweigh inadequacy of existing transportation, it has been declared in New Hampshire,²⁴ Pennsylvania,²⁵ Virginia,²⁶ South Dakota,²⁷ Montana,²⁸ Colorado,²⁹ Washington,³⁰ and California.³¹ Often in these states stress has been put on the point that public interest and convenience not only justify but demand the establishment of motor service. It should be emphasized here, though, that states sometimes effect a change of front on the question and that no long period of time is necessary to bring this about.

24. *B. & M. Transportation Co. (N. H.)*, order 1712, July 17, 1925; *Re Venthworth*, order 1759, July 30, 1925.

25. *Allegheny Valley St. Ry. Co. v. Peter Greco*, P. U. R., 1917A, 725.

26. *Norfolk Southern Ry. Co. v. Commonwealth* (Va. Ct. of Appeals), 26 S. E. 82.

27. *Re Munk* (S. D.), P. U. R., 1926C, 417, decided February 8, 1926.

28. *Re Broadhead* (Mont.), P. U. R., 1924E, 222.

29. *Re Carver* (Colo.), P. U. R., 1923B, 242, and *Re Arnett* (Colo.).

30. *Re Auto Interurban Co.*, P. U. R., 1923E, 477; *Re Krakenberger*, P. U. R., 1928C, 230.

31. *Re Miller* (Calif.), P. U. R., 1927A, 630.

In determining whether conditions warrant establishment of service, the Colorado commission has ruled that the amount of taxes paid by the rail line is irrelevant.³² Nor will North Dakota view as the determining factor the amount of taxes the proposed motor service will pay; the amount is interesting but not at all "controlling" in deciding whether to allow motor competition with a rail line.³³

In Colorado, the complaint of a rail carrier that it is not able to earn expenses has been declared no basis for the commission to deny a certificate to competing motor line; in Illinois, railway loss of revenue is insufficient grounds for denying a certificate for motor service.³⁴

On the sole basis that the prospective motor carrier would charge less than existing rail service, a competitive certificate has been granted in Arizona,³⁵ in which state the elimination of transfer of freight has proved proper ground for granting a certificate for motor truck competition.³⁶ Public demand for through bus tickets resulting in a reduced rate justifies authorization of such tickets, although the reduced rate is much lower than that charged by rail carrier.³⁷

The Michigan supreme court has ruled that the utility commission need not, when determining public convenience and necessity, take into consideration the effect that proposed motor competition would have on rail lines, since the question of public convenience and necessity relates to motor carrier activity alone.

In pointing out that the less convenient mode of transportation must of necessity yield to the more convenient, the Ne-

32. *Re Preston* (Colorado), 1922C, 844.

33. *Re Fargo-Moorhead Trucking Co.* (N. D.), P. U. R., 1927A, 356.

34. *Re Carver* (Colorado), P. U. R., 1923B, 242; *Re Egyptian Transportation System* (Ill.), P. U. R., 1928A, 43.

35. *Re Hatchell* (Arizona), P. U. R., 1923D, 543.

36. *Re Ward* (Ariz.), P. U. R., 1925E, 574.

37. *Re Pickwick Stages* (Calif.), P. U. R., 1926D, 609.

38. *Rapid R. Co. v. Michigan Public Utilities Com.*, 196 N. W. 518 (P. U. R., 1924B, 585).

New York public service commission takes a broad view of the situation:³⁹ Drivers of ox-teams opposed the Erie Canal; the management of the Erie Canal later opposed the rail competitor, and now the railway is objecting to the motor carrier. It is only logical that captains of the present order oppose and protest against any innovation which would undermine their supremacy. This commission has favored the motor carrier applicant instead of the established line which did not exercise vigilance to make adequate service.⁴⁰ From this case rail lines may conclude that they merit no favor from the New York commission unless they are awake to the opportunities and necessity of keeping service adequate.

Where the rail carrier failed to modify his schedule so as to provide service demands for which had recently developed, the Illinois commission seeing that it was impossible for the rail line to furnish the type of service proposed by the motor applicant adjudged the service inadequate and granted the certificate for motor service.⁴¹ The same commission expressed a similar view in another case.⁴² Ruling that the railroad could not furnish the service demanded, the decision of the Washington commission granted the motor certificate, and although the commission gave the railroad no opportunity to supply the additional service, the state supreme court upheld the commission ruling.⁴³ This failure to give the rail line opportunity to supply the additional service, while valid, stands in marked contrast to the Ohio doctrine that the established carrier must be given sixty days in which to furnish

39. *Re Aldrich* (N. Y.), P. U. R., 1923A, 385.

40. *Re Bee Line* (N. Y.), P. U. R., 1926D, 67. Where a noticeable amount of traffic was not being cared for by the railway whose service at commuting hours was poor, this commission recently authorized bus service competing therewith, which would give corner-to-corner service. Here the bus fare would be higher than for train service. *Re Way*, P. U. R., 1927D, 35.

41. *Re Egyptian Transportation System*, P. U. R., 1928A, 43.

42. *Re Tri-State Bus Co.*, P. U. R., 1927E, 616.

43. *Northern Pacific Railroad Co. v. Washington Dept. of Pub. Works*, 256 Pacific 333.

necessary additional service before a certificate to another party can be granted.

In Virginia no favor to the rail line is in sight, as was evidenced in the *Norfolk Southern* case;⁴⁴ and in the commission's opposition to restricting motor service has appeared, the belief being expressed that motor service will supplant in great part if not wholly the existing modes of transportation.⁴⁵

Perhaps in Kentucky the rail line enjoys as little protection from motor service as exists in any state. Railroad lack of vigilance in seeking certificates to operate motor service has put motor service into the hands of non-rail competitors.⁴⁶ An unusual provision appears in the Texas act of 1927 to the effect that the commission cannot deny a certificate for motor service on the ground that rail service is adequate.⁴⁷

The Missouri commission on September 20, 1927, granted a certificate under the recent regulatory act to a bus line which had built up a considerable volume of business in the last three years. This permission was given despite the protest of five rail lines that in the first five months of the year they had suffered a 10 per cent. passenger loss. To the commission the volume of business the bus had come to enjoy was sufficient evidence that the service was demanded by the public,⁴⁸ thus passing over the probable, but not certain effect on the rail lines. Quite recently the Oklahoma supreme court upheld the commission's granting a certificate for motor service paralleling the Rock Island between Enid and El Reno. Residents in Enid and along the route believed the train service inadequate.⁴⁹

The relation between motor and rail carriers has assumed a particularly acute character in Minnesota. Under the intrastate

44. 126 S. E. 82 (Va. Ct. of App.)

45. *Re Wright*, P. U. R., 1925B, 141.

46. See my article in *National Municipal Review*, Sept., 1927.

47. *Laws of 1927*, Ch. 270, Section 7.

48. *Bus Age*, October, 1927, 41.

49. *Bus Transportation*, October, 1927, 596.

distance class rates as fixed in 1913 a considerable jobbing business developed. In 1925 under the Fargo decision of the Interstate Commerce Commission, railways in northern and southern Minnesota so increased their rates on intrastate class freight as to put the local jobber at a serious disadvantage with the jobber in Chicago and eastern cities. And this local jobbing business was threatened by filed proposals for further rate increases.

Meantime applications for certificates to institute motor truck service began to pour in upon the Minnesota commission. By June 3, 1927, a hundred had been filed. Hearings beginning in April, 1926, were held in twenty-six towns. At these hearings some 1,000 witnesses were introduced and as many exhibits were set forth. Quite naturally the rail carriers opposed the establishing of motor truck service, some taking the ground that the state act does not contemplate the establishment of motor truck service where rail service is available; the Great Northern favored restricting motor truck activity to the thirty-mile zone. But against rail protest denying statutory contemplation of motor competition with rail lines, the commission reasoned that the statute contains no language warranting such interpretation, and that if the aim had been to restrict motor service as contended the statute would have so provided.

As to whether competition is to be allowed with rail lines the commission goes further to recite the waterways policy of the Federal Government in areas served by rail carriers and quotes from the Merchant Marine Act of 1920. Thus the commission proceeds to the conclusion that while in a conflict between the interest of interstate and intrastate commerce the latter must yield to the former, the commission is not prohibited from taking advantage of the newer modes of transportation eminently suited to local intrastate needs "*where it is economically feasible to maintain equality without detriment to either class of traffic.*"⁵⁰ The commission decided to consider each application on its merits ;

50. Italics are mine.

some have been granted, some denied, and some dismissed. The decision signifies that if the rail lines do not see fit to transport intrastate shipments at rates the commission fixes as just, the state is then at liberty to authorize motor trucks to do that "which the rail carriers fail to do."⁵¹

In a vigorous dissent, Chairman Shaughnessey of the Nevada commission in 1928 took the ground that if motor service is as profitable supplement to rail service, then established motor services should be protected against railway entrance into motor services competitive with the motor lines.⁵²

But the weight of legislative and administrative practice is toward protecting the rail lines against proposed competitive motor service; and in the last year this trend is all the more noticeable. The grounds for taking such a view include the fact that rail lines have big investments, that they are losing much of their local and passenger traffic to motor service, that the rail lines are heavy taxpayers, that a great number of people are interested in rail securities, and that rail prosperity or the lack of it reflects itself in the general economic life of the community.

The commissions generally have shown no strong desire or tendency to protect the rail lines solely because they are operating at a loss or because they are in danger of so doing; but they have revealed a tendency to combine declining financial condition with considerations of public service or public welfare as the basis for favoring the rail lines. Most of the decisions on this point lay particular stress on sufficiency of service of the rail carrier as the justification for protection.

In Maine, it has been held that rail service is of more importance to the public than is the bus, and a certificate denied to a non-rail applicant to compete with the electric line, though the

51. N. A. R. & U. C. *Bulletin* 55, June 3, 1927, 4. This bulletin and the order of the Minnesota Railway & Warehouse Commission covering Applications for Freight Transportation Certificates present the question here discussed.

52. Re Virginia & Truckee Ry. Co., P. U. R., 1928C, 211.

commission ruled that if the electric seeks the certificate to establish motor service in connection with its rail service, the certificate will issue.⁵³ Thus it is revealed that the choice of transportation service is not as between *types* of service, but between *agencies* to perform the service. The same commission has indicated that so long as steam and electric lines furnish reasonable, adequate and safe service, no competitive motor service will be authorized.⁵⁴ A quite similar attitude has been expressed in New Hampshire,⁵⁵ and in New Jersey.⁵⁶ Steam and electric lines offering proper service will not be paralleled by competitive bus service in Rhode Island.⁵⁷ In this state public interest warrants substitution of motor service by an electric line whose revenue does not warrant outlays for approaching paving burden.⁵⁸ Favoring the railways by granting them certificates in preference to independent carriers has been justified by the Illinois commission on grounds of transportation experience, storage, transfer, and telegraph facilities, big investments, necessity for independents to make great outlays for adequate equipment, together with resulting efficient and economical service furnishable by the rail line.⁵⁹

For some time the New York commission has viewed rail carriers as entitled to preferential consideration so long as they are conscious of their obligations to the public and reasonably discharge these obligations.⁶⁰ The supreme court of Michigan interpreting the statute as limiting the determination of public convenience and necessity to motor carrier activity only, expresses itself in favor of the legislature's authorizing the commission to

53. Re Wenier, P. U. R., 1925B, 357.

54. P. U. R., 1923E, 772.

55. Re Bell, P. U. R., 1923E, 319.

56. P. S. Ry. Co. v. Mayor, P. U. R., 1926E, 352.

57. Re Aselton, P. U. R., 1926E, 370. New Jersey protection for railroads suffering losses is treated in *Bus Age*, August, 1928, 173.

58. Re United Electric Rys. Co., P. U. R., 1927E, 200.

59. Re Chicago & Joliet Transportation Co., P. U. R., 1928D₃, Special Section, 42.

60. P. U. R., 1923C, 645; P. U. R., 1923D, 623.

deny a certificate where service is adequate.⁶¹ Since about two thirds of the buses in Michigan are operated by electric line one concludes that a large measure of protection is allowed the electric lines in that state. The Indiana commission has ruled recently that competition with the rail carriers by other means must be considered in deciding cases involving competitive certificates.⁶² The Massachusetts commission seems clearly to favor the rail applicant.⁶³

In Iowa, serious inconvenience to a majority of the public occasioned by the decrease in rail service due to authorizing competitive motor service constitutes adequate grounds for protecting the railway against such competition.⁶⁴ A rail carrier offering proper service is not to be interfered with by motor competition according to a recent decision in Montana,⁶⁵ and competition which impairs rail service is not to be allowed according to another decision of the same commission.⁶⁶ Utah and Wyoming and Missouri voice the same view favoring the rail line.⁶⁷ Early in 1923 the California commission emphasized vigilance on the part of rail carriers to keep up to normal the service offered as a means of preventing motor competition with them.⁶⁸ A decision of the supreme court of West Virginia⁶⁹ on September 20, 1927, is to the effect that when a rail line asks permission to establish motor carrier service it is to be given preference over a non-rail applicant. This decision points the way to checking establishment of

61. Note 38.

62. *Re Peoples Motor Coach Co.*, P. U. R., 1926A, 407.

63. *N. Y., N. H. & H. case*, P. U. R., 1926B, 157.

64. *Re Rudy*, P. U. R., 1925D, 743.

65. *Re Penny*, P. U. R., 1926E, 352.

66. *Re Simms-Great Falls Freight Service*, P. U. R., 1926C, 818. Here revenue also entered into consideration.

67. *Re Payne* (Utah), P. U. R., 1924A, 545, and *Re Streeper* (Utah), P. U. R., 1924B, 392; *Wyoming Transportation Co.* (Wyo.), P. U. R., 1925E, 861; *Re McCartney*, P. U. R., 1928C, 182-88.

68. *Re Saretto*, P. U. R., 1924A, 458.

69. *Bus Age*, October, 1927, 41.

further competitive motor service by rail carriers applying for the certificate.

In 1925 the Washington commission held as immune from motor competition rail operators who are abreast of service needs,⁷⁰ and the same commission held that where the rail carrier was indispensable to the economic life of a timbering community, the rail line would be protected in its operations.⁷¹

In 1924 the financial status of the rail carrier came to the front as entitling a rail carrier to protection in Pennsylvania. Public convenience will not suffice to grant a certificate for motor service competitive with a rail line which will be put in jeopardy thereby.⁷² Consideration must be given a rail line whose revenue is being depleted, thereby producing a weakened financial condition, ruled the Ohio supreme court in 1926.⁷³ No certificate should issue to compete with an electric line whose revenue is on the wane and whose losses would continue were such certificate granted, held the Rhode Island commission.⁷⁴ Likewise have the Washington and New Jersey commissions taken a definite stand to protect the rail line whose decreasing revenue is an outstanding feature of its operation.⁷⁵

In California,⁷⁶ New Hampshire,⁷⁷ and New York⁷⁸ rail carriers have been allowed to abandon rail service because of declining financial receipts, and from the probable effects of continuance. In the first state, the question whether the railway would sub-

70. *Re Inland Empire Stages*, P. U. R., 1925D, 344.

71. *Re Andrews*, P. U. R., 1925D, 819. Similar decision of Nevada Commission in 1928. *Re Virginia & Truckee Ry. Co.*, P. U. R., 1928C, 208.

72. *Re Bingamer Motor Express Co.*, P. U. R., 1924C, 389; also *Re Edmunds*, P. U. R., 1924E, 661.

73. *East End Traction Co. v. Public Utils. Com.*, 152 N. E. 20.

74. *Re Newport Electric Corporation*, P. U. R., 1925E, 309.

75. *Re Tacoma-Ashford Transit Co.*, P. U. R., 1925C, 318, and especially in *Re Stedman*, P. U. R., 1925D, 812; *Re Choate and Tumulty v. Bd. of Pub. Utils. Commissioners*, P. U. R., 1928A, 98. See also *Bus Age*, August, 1928, 173.

76. *Re Union Traction Co.*, P. U. R., 1925E, 507-8.

77. *Re Boston & Maine Ry.*, P. U. R., 1925A, 133.

78. *Re Yonkers Ry. Co.*, P. U. R., 1925D, 195.

stitute motor service was not material to question; in the third, the rail carrier was allowed to substitute motor service, and a decision similar to that in New York has been reached in Nebraska.⁷⁹

What attitude does the commission take in cases where the rail line is one of the applicants for the certificate to operate motor service on a route competing with the rail line? As early as 1919 Massachusetts favored granting the certificate to the rail line.⁸⁰ On the basis of economic considerations, the California commission has favored the rail line, recognizing the financial responsibility of the rail carrier and its lower fares in the form of commutation tickets.⁸¹ The heavy investment of the rail carrier has proved the determining factor in its favor in Utah.⁸² On the basis of financial responsibility and transportation skill and experience of rail carrier, the Illinois commission has awarded the certificate to the rail applicant in preference to the non-rail applicant.⁸³

Where the service of the rail carrier is inadequate, the existing rail carrier should be given the first chance to make the service adequate, according to several decisions, an important one of recent date being that of the Illinois supreme court in the *Egyptian Transportation* case. Here it was held that the commission must not grant a certificate to a second party until it has given the rail carrier an opportunity to make adequate the service and the latter has failed to do so.⁸⁴ This need for motor service and the propriety of allowing the railway to establish such service have been further recognized in Illinois,⁸⁵ and also in Pennsylvania.⁸⁶

In a classic statement, the Iowa commission has gone on record to the effect that rail carriers should be not only allowed to secure

79. Re Lincoln Traction Co., P. U. R., 1927D, 625.

80. Re Union St. Ry. Co., P. U. R., 1919C, 906.

81. Re United Stages, P. U. R., 1925A, 700.

82. Re Gust Chopp, P. U. R., 1926D, 541.

83. Re Chicago, N. S. & Milwaukee Ry. Co., P. U. R., 1923C, 61.

84. 152 N. E. 510.

85. Re E. B. & R. Ry. Co., P. U. R., 1928A, 653.

86. Re Reading Transportation Co., P. U. R., 1927E, 632.

certificates to operate motor service on the highway when they apply for the certificates for such authorization, but should be encouraged to do so. Financial responsibility, transportation experience, and knowledge of transportation needs are given as reasons for this view.⁸⁷

Massachusetts and New Jersey have gone so far in emphasizing the importance of the rail carrier as to state that it should not only be protected, but also that it should be *required* to take out certificates to furnish motor service where such is necessary.⁸⁸ A similar announcement was made by the District of Columbia commission,⁸⁹ but the Illinois commission has no authority to force a railway⁹⁰ to furnish motor service.

But in New Hampshire the fear has been expressed that establishment of motor service by the rail lines will prove but an entering wedge toward abandonment of its rail service and to transfer its operations to the highway; consequently, the railway was advised to "stick to its rails."⁹¹

While Texas legislated in 1927 against the power of the commission to deny a certificate to a non-rail applicant merely on the plea that existing rail service is adequate, we find statutes in at least three states specifically directing that rail transportation be taken into account when certification of motor service is being considered.⁹²

An examination of the twenty-one most recent cases raising the issue as between the rail and motor carriers shows nine of them decided in favor of the motor carrier and twelve in favor of the rail carrier.

87. Re Ft. Dodge, D. M. & S. Transportation Co., P. U. R., 1926C, 27.

88. Re N. Y., N. H. & H. Ry., P. U. R., 1926B, 341; Re Choate & Tumulty v. Bd of Pub. Utils. Coms'rs (N. J.), P. U. R., 1928A, 98.

89. Re Washington Railway & Electric Co., P. U. R., 1922C, 767.

90. Re Tri-State Bus Co., P. U. R., 1927D₃, Special Sections, 41-2.

91. N. A. R. & U. C. *Bulletin*, Bulletin 65, 1926.

92. Kansas, *Laws of 1925*, H. B. 541, Sec. 4; Minnesota, *Laws of 1925*, Ch. 185, Sec. 8; Mississippi, Act of March 18, 1926, Sec. 8.

Although motor carrier regulation began at least a dozen years ago, we find among the above cases definitely protecting the rail carrier only one antedating 1922. This fact signifies the recency of the trend toward preferential consideration of the rail carrier. Whether this trend will prove permanent and lead to an established policy—and weight of evidence points in that direction—the present tendency is to protect the rail against undue competition from non-rail motor carriers.

What will be the ultimate place of the motor carrier in the transportation system? From the attitude of the motor carriers toward being subjected to regulation applied to railways and their desire to develop with the least restraint possible, as adduced at the Regional Hearings, they aim to maintain operation separate from and independent of rail carriers. Their positive action in formation of operators' associations and through these lobbying the legislatures is further evidence of their determination to maintain separate existence.

Where electric and motor carrier are offering competing service, coordination of that service "without prejudice to either" is heralded as the proper solution of the problem of the relationship between electric and motor transportation. This view comes from A. H. Swayne, vice-president of the General Motors Corporation.⁹³ The California commission in 1925 ruled that motor carriers have an obligation to "coordinate their schedules with those of other carriers,"⁹⁴ and the Nebraska commission has expressed a similar view.⁹⁵ The former commission went on record February 15, 1928, as preferring to grant certificates to an applicant electric company to establish coordinated bus service rather than to a stage line not coordinated with other transportation agencies.⁹⁶ Coordination of the two types of service is the solution as seen by Lucius S. Storrs, managing director of the

93. N. A. C. C. *Bulletin*, October 21, 1926.

94. *Re Lingo Bros.*, P. U. R., 1926A, 272.

95. *Ralston v. Salistean*, P. U. R., 1925A, 334.

96. *Re Pacific Electric Ry. Co.*, P. U. R., 1928E, 136.

American Electric Railway Association. Coordinated service, according to him, is now being offered by 313 companies, involving 18,000 miles of rail lines and 16,000 miles of bus route; 75,000 street cars and 8,500 buses are thus employed. Forty-six minor bus lines operating over 570 miles of route formerly served by rail lines are controlled by electrics. This coordination of service has been developed largely since 1921. Further, he sees coordination in the near future which will involve steam lines, electric lines, buses, taxicabs, and airplanes.⁹⁷

But whether coordination of the two independent types of service and service agency shall come about, possibly a third answer as to the ultimate solution lies in the plan of J. E. Slater for rail lines to take the initiative in entering the bus field in earnest.⁹⁸ His reasons for railways going into bus operation are: (1) Ability of the railway to save 75 per cent. of cost of operating local train service by substituting buses where load is no more than thirty passengers; (2) possibility of the bus developing new business for the railroad; (3) even if buses be operated by railways at a loss, the loss will be less than that incurred in operation of local trains; (4) securing certificates, rail lines can thereby head off motor competitors.

Although he feels the railways would by use of the bus furnish equal or better service than would independent operators, the burden of Slater's case stressed the interests of the rail line. In the reasons above given for railways embarking in motor carrier operation, Slater recognizes the motor carrier as an able competitor with the railway, and the bus as a potentially valuable means whereby the railway could retain at least the local business enjoyed at present.

But his argument for the railway's entering into bus operation is well taken. In 1923-6 ten states, in which rail lines were

97. P. U. R., 1928D₄, Special Section, 7.

98. Note 1. Mr. Slater is now with the Boveri Electric Corporation, Camden, New Jersey.

finding difficulty in securing permission to enter the bus field, but specific legislation authorized the rail lines to institute bus service. In all except four state electric lines are operating buses; and in states like Pennsylvania, Ohio and Michigan the electric lines either operate or control a big proportion of the buses in use.

One of the most difficult questions recognized by the Interstate Commerce Commission relative to the ultimate solution of the problem of regulating motor transportation has proved to be the relation of this new type to the rail carrier. To get sufficient data on this matter extensive regional hearings were instituted in 1926, the results of which will probably serve as the basis for Federal regulation of the interstate phase of motor transportation.

99. Alabama, Georgia, Indiana, New Hampshire, New Jersey, New York, Oklahoma, Rhode Island, Texas, and Vermont. See *A. E. R. A. Bulletin*, 120, XVII.

100. See chapter on proposed Federal regulation of interstate carriage.

CHAPTER 14

ENFORCEMENT, PENALTIES AND REVIEW ENFORCEMENT

It would be a banality to say that the effectiveness of any plan of regulation depends on its enforcement; yet the truism has particular application to the field of motor carrier regulation. As in other fields, regulation here was begun only after an acute situation had developed, and likewise there are in this industry daring, reckless spirits who are willing to take chances with the law. It was to be expected that opposition to every phase of regulation would be encountered. The view that operators are prone to error has been pointedly expressed by the Utah commission recently:

Anyway it must suffice to say that if every public service corporation that commits an irregularity or does some act violative of our public utilities law is to be put out of business by cancelling its right to operate, then there will be mighty few conveniences afforded in the field of transportation, and nothing left for the public to do but to walk and carry.¹

This opinion possesses practical significance as to the inevitableness of waywardness among motor carriers. And the opinion is confirmed by administrative experience in other states from the early period of regulation of motor carriers to the present time. One commission has impressed on an illegal operator the necessity of securing the certificate, although the latter holding the service of the existent operator inadequate thought he had justifiable grounds for establishing service without a certificate.² The principle of consideration for the vigilant has been stressed in another jurisdiction.³ In a third instance, violation of the

1. *Re S. L. & U. R. Co.*, P. U. R., 1925A, 160.

2. *Re Fullington v. Milligan* (Pa.), P. U. R., 1919F, 215.

3. *Illinois*; P. U. R., 1923E, 254.

law was not condoned on the plea that previous to the regulatory act the defendant occasionally took out straw ride parties by horse drawn vehicles, or that he intended to operate as a private carrier.⁴ Unimpeachable statements must be made in applications for certificates, including those based on affidavits.⁵ A general warning may be issued that unless the carrier conforms to the law he cannot expect the protection of that law.⁶

And the propensity toward non-observance of the law has been pronounced in a jurisdiction whose regulation program places it easily in the front rank: In 1923-4 some 75 complaints were made to the California commission by authorized carriers against unauthorized carriers.⁷

There is a good deal of evidence that commissions have not been inclined to deal harshly with violators.⁸

The experience of the Utah commission illustrates some of the difficulty in enforcing regulation. A carrier operating without the commission's authorization was ordered to desist, but he disregarded the order. Thereupon the commission applied to the district court for an injunction against the unauthorized operator. This court held that to secure an injunction the plaintiff commission would have to establish "the existence of a public highway" along the route concerned, which the evidence introduced failed to prove, and the action was nonsuited. The commission appealed to the state supreme court, before which it contended that the lower court was in error in that (1) defendant operator in pleading a right to operate on roads by virtue of issuance of certificate to another operator previously estops himself from asserting that the route concerned is not a public highway, and

4. Wayne Automobile Transport Co. v. Harder (Pa.), Complaint Docket 6097, November 22, 1926.

5. Newark-Zanesville case, in *Bus Transportation*, October, 1927, 597.

6. Kentucky Court of Appeals, 285 S. W. 241.

7. Report of Auto Stage Department, 1923-4, 20.

8. Note 1; Re Miller (Calif.), P. U. R., 1921E, (Abstract) 841-2; Re Dodge Alley (Wash.), P. U. R., 1926E, 806; Landis v. Henry (Pa.), P. U. R., 1919C, 554.

that (2) adequate evidence had been introduced in the lower court to establish the public highway nature of the route concerned. Both these points were decided by the state supreme court in favor of the appellant commission and the case was remanded to the district court.⁹

While civic bodies, police in cities and on the highway, and the press may do much toward better enforcement of regulation, it is on the commission that rests the responsibility if not in final analysis at least in the greatest degree. One of the most evident and practical means by which the commission can keep itself informed on the current activity of motor carriers under its control is through reports.

Some dozen states provide specifically in the regulatory statute for carrier reports to the commission. As to frequency, the statutory provisions range from annual to monthly reports, with occasional specifications for special reports on call; the Maine provision leaves the frequency entirely to the commission. The scope of the reports varies from primary consideration of financial affairs to anything the commission may require. The Maryland law directs that motor carrier reports be made according to the plan specified by the Interstate Commerce Commission.

In the absence of specific statutory provision, it is evident that the commission may prescribe reports by virtue of the general power to issue rules and regulations. The Michigan commission has instituted a plan of quarterly reports and has prescribed an elaborate and comprehensive, yet usable report form. In scope the form calls for (1) operating revenue (as derived from eight sources); (2) operating expenses (with thirty-five subheads); (3) schedule of depreciation (to be figured on actual cost basis); (4) total bus miles traveled; (5) number of passengers carried; (6) per-mile passenger revenue; (7) per-mile cost of operation; (8) and such miscellaneous items as per-mile cost of insurance, fuel, lubricants, and tires. With a record based on such reports

9. *Public Utilities Com. v. Jones*, 179 Pacific 745.

properly made, the commission would have at its command sufficient information to enable it to solve the basic problems of motor carrier regulation, especially those relating to rates and service.

Reports already published by the regulatory bodies in such states as California and Oregon reflect comprehensive and intelligible report forms.

However effective reporting may be, it is not sufficient as a means of finding out the facts of motor carrier operation. To secure information and to inculcate respect for the law, rules and regulations, several states have instituted inspection. Ohio has an inspectional staff of fourteen appointed by the commission, each inspector being assigned to a particular district. The staff is supervised by a chief inspector responsible to the commission. North Carolina uses only four inspectors, who work under the direction of the chief of transportation. The Kentucky commission provides for inspection by the commissioner and four assistants, three of whom are assigned to particular districts. Indiana reports an inspectional staff of one man.

It is usual among the states to find any and all phases of operation subject to inspection. Whether the law or the rules and regulations are being violated, whether the violation is one of omission or commission, it comes equally within the purview of inspection. Fares, schedule, safety of operation and condition of equipment appear as the important points to be observed by the inspector; the last named point has been emphasized particularly in North Carolina and not at all ignored in Kentucky.

On the reports of the inspectional staff the commission may order improvement, and the recommendation of the chief inspector has been followed by the Ohio commission almost without exception. Much improvement in the service has resulted in Ohio and Kentucky. The Indiana staff of one inspector with oversight of some 400 operators running 900 vehicles seems hardly

ore than a joke; and this conclusion is all the more inevitable because the inspection is made largely on call.

In 1927 the inspectional work received not only recognition but so encouragement in North Carolina; the new act empowers the commission to appoint whatever inspectional staff is necessary to secure proper enforcement of the law.¹⁰ The Texas commission needs funds urgently to employ inspectors to check up on the violators of the regulatory law instituted in 1927.¹¹

Until human nature is remodeled, law cannot become self-executing. Motor carrier regulation will find effective support in inspectional work properly organized and prosecuted.

Investigation is another enforcement means at the disposal of the commission. This power is specifically conferred in eleven states. Usually an investigation can be made in regard to any phase of motor carrier activity; but in a few, Illinois for example, the law emphasizes rates as a particular object of investigation. In Indiana not only rates and charges are specially subject to investigation, but the law also provides for investigation to determine whether law and rules and regulations are being observed, whether practices and measures of service are just, or equipment is in safe and sanitary condition. Maryland specifies investigation of any act done or omitted.

The commission usually enjoys power to make investigation either on complaint or on its own motion. It may make investigations through its own inspectors or examiners; or it may resort to the attorney general or district attorney. Among the interested parties who may make complaint against a motor carrier we find Vermont the attorney general, state's attorney for the county concerned, any company affected by the matter complained of, any other persons affected, or if only one person is affected, then that person may file a complaint.¹² A chamber of commerce is a competent

10. Senate Bill 630, 1927, Section 21.

11. *Bus Transportation*, November, 1927, 659.

12. *Laws of 1925*, Act No. 88.

party to file a complaint against a motor carrier in California especially "if the committee's action in filing the complaint has been ratified by the chamber at a subsequent meeting."¹³ Any public utility, any town, city, or other body politic, corporation, chamber of commerce, the attorney general, or any person served or claiming a right to be served by the carrier may file a complaint against the carrier.

The Colorado commission has taken a position that it cannot handle the matter of unlicensed taxis operating as common carriers until someone brings the matter before the commission.¹⁴ It thus renouncing power to make investigations on its own motion, this commission emphasizes the quasi-judicial nature of the commission.

An early example of the exercise of the power of investigation on motion of the commission itself is found in California in 1911 when the commission made an inquiry into rates and other phases of activity of motor carriers.¹⁵ The same commission so exercised its power again in April, 1918, inquiring into the reasonableness of methods and practices of motor carriers.¹⁶

On its own motion the South Dakota commission in 1913 investigated the activities of the Standard Oil Company of Indiana hauling over South Dakota roads oil products and merchandise belonging to the company.

The commission on investigation may find warrant for citing the investigated party to appear at hearing, as was done in the South Dakota case mentioned in the preceding paragraph. Here the commission cited the company to appear before the commission for hearing and to produce its records. The company counsel appeared, and despite able argument, the commission directed the company to comply with the rules and regulations within

13. *Re Lingo Bros.*, P. U. R., 1926A, 252.

14. *Re Paradox Land and Transport Co.*, P. U. R., 1924E, 579.

15. P. U. R., 1918B, 297.

16. P. U. R., 1918E, 782.

days.¹⁷ This South Dakota case is only an illustration of the usual power to order an investigation. In a few states such as Maine and California, the statute provides that at the hearing no one shall be excused from testifying on the plea that to testify will incriminate himself.

The party investigated may observe the commission's order entered after the hearing; or it may not, as happened in the South Dakota case above. During the year 1923-4, of the 75 complaints against unauthorized carriers filed with the California commission almost all were settled by informal advice to the carriers. Where cessation of an act is desired, this commission may issue an injunctive order for the enforcement of which it may resort to the courts. But the state supreme court has ruled that the commission is without power over threatened violations of the law, and that only in actual violations of the law can the commission issue the injunctive order.¹⁸ The Colorado commission has no power to issue an injunctive order against unlawful operation of motor vehicles.¹⁹

If the party fails to comply with the commission order issued as the result of formal hearing, the commission may take the matter to the courts. It may employ the attorney general's office, for instituting the suit, as in Ohio and Louisiana;²⁰ resort may be had to either the attorney general or the district attorney, as in Oregon and Nevada;²¹ or use may be made of either the attorney general or of the commission's attorney, as in California.²²

But complaints against motor carriers need not necessarily be made to the commission; and complaints may be made the ground of court action direct. For example, in Vermont the attorney

17. *Re Standard Oil Co.*, P. U. R., 1926A, 715-30.

18. *Motor Transit Co. v. Railroad Com.*, 209 Pacific 586.

19. *D. & I. Ry. Co. v. Clark*, P. U. R., 1925E, 599.

20. *General Code*, 577; *Pub. Service Com. v. Johnson Motor Freight Line*, P. U. R., 1928B, 175.

21. Section 6102, *Public Service Commission Code of Oregon*; Sec. 40 of *Public Service Commission Law of Nevada*.

22. *Public Utilities Act*, Secs. 4, 8, 70, 72, 80.

general may receive a complaint from an interested party, may direct the district attorney to investigate the matter or do it himself, and if proper cause is discovered institute proceedings in the court.²³

Who can secure an injunction against a motor carrier? The West Virginia supreme court of appeals has said that any person who has a certificate to operate over the public highway on a regular route and definite schedule and only such can enjoin an illegal operator.²⁴ This was in keeping with a previous decision by the same court two years before.²⁵ The Arkansas supreme court has taken a view similar to that of the West Virginia court.²⁶ In Washington a railway competitor with interests involved may secure an injunction against a motor carrier.²⁷ An illustration of the attorney general's bringing suit in the name of the people is found in Colorado.²⁸ The Massachusetts law permits the department of public utilities, any licensing authority, ten citizens of any city or town or any interested party to apply to the courts for injunction against motor carriers.²⁹

Carriers who have no certificate but who have applied for such are in a position of immunity from injunction against illegal operation, the Arkansas supreme court has held.³⁰ It is, according to the statement of the court, an established principle in that jurisdiction that a certified operator cannot secure an injunction against an unauthorized operator who has made application, until the matter of the application is finally settled. This seems a rather objectionable principle since it allows a person to file an application, and until and unless the commission decides in the *negative*,

23. Note 12.

24. *Pocohontas Transportation Co. v. Craft*, 130 S. E. 468.

25. *Carson v. Woodram*, 120 S. E. 512.

26. *Kinder v. Looney*, 283 S. W. 9.

27. *N. P. Ry. Co. v. Yakima-Northern Stages* (Wash. Supreme Ct.), 238 Pacific 905.

28. *Greeley Transportation Co. v. People*, 245 Pacific 720.

29. Senate Bill 357, 1925, Sec. 3.

30. Note 26.

cannot be enjoined from operation. Chief Justice McCulloch entered a strong dissent to this opinion.

The enforcement of regulation has brought forth a few cases of mandamus. In *Judge v. Hylan*,³¹ the New York supreme court granted a mandamus compelling the mayor to have the Transportation Corporations Act enforced by allowing no one to operate motor carrier vehicles without municipal consent. The court here held that the mayor's duty to enforce the law was ministerial and not judicial. Mandamus has been issued directing the West Virginia commission to issue a competing certificate where public interests demanded such, and where it appeared that the existent operator had illegally put into effect a new schedule.³² Where an injunction has been issued against the operation of a motor vehicle until the certificate application is decided, the enjoined operator may have recourse to mandamus to compel commission action, the Colorado supreme court has ruled.³³

How may an unauthorized carrier be proceeded against? An answer to this question is found in Pennsylvania. The injured party may seek an order from the commission directing cessation and imposing the penalty provided by law. He may seek an injunction from a court, or sue for money damages sustained. To secure enforcement of the commission order of cessation, resort may be had to the court.³⁴

PENALTIES

Often the statute makes specific provision for penalties for violation of the act. In prescribing a fine of from \$10 to \$100, Kentucky appears to impose the mildest penalty. Minnesota prescribes a fine of \$50 a day for failure to comply with a commission order. New Hampshire and Maryland provide a maximum fine, \$100 being the limit in the former state and \$5,000 in the latter ;

31. P. U. R., 1922B, 541.

32. *Bunch v. Fortney* (W. Va. Supreme Ct. of App.), 116 S. E. 753.

33. Note 28.

34. Rosenbaum and Lilienthal in *University of Pennsylvania Law Review*, June, 1927, 719.

Louisiana authorizes a fine from \$100 to \$5,000. Several states specify a maximum fine and a maximum term of imprisonment for violation of the act, \$100 and 90 days in jail obtaining in Michigan, and \$100 and 60 days obtaining in Massachusetts and Connecticut. Following the California act of 1917 prescribing a maximum of \$1,000 fine and one year's imprisonment, no fewer than six states have adopted a similar provision.

REVIEW

The regulatory acts in seventeen states specifically provide for appeal from the commission order and for court review of such order or decision. Generally, any interested person may seek judicial review of the commission decision.

To prevent the operation of illegal motor service competitive with an electric railway which has met the state requirements, the electric railway is a proper party to a suit, ruled the Kentucky court of appeals, recognizing the protection of railway property as the justification for the railway's appearing as a party.³⁵ Despite the failure of the statute to say who are parties to a review proceeding, the Washington supreme court has said that the successful applicant and the commission are essential parties to a review sought by an unsuccessful applicant to test the validity of the commission decision granting a certificate.³⁶

In one group of states appeal lies to the trial courts;³⁷ another group provides review on direct appeal from the commission to the state supreme court.³⁸ In a few states, Louisiana and Nevada, for example, an appeal from a commission order is put in a privileged position relative to other classes of cause. Review by the supreme court directly serves to expedite the settlement of

35. *Peoples Transit Co. v. Louisville Ry. Co.*, 295 S. W. 1055.

36. *Sumner-Tacoma Stage Co. v. Washington Dept. of Pub. Works*, 254 Pacific 245.

37. Such as Connecticut, Illinois, Indiana, Kentucky, Louisiana, Maine, Minnesota, Nevada, Oregon, North Carolina, Montana, Iowa, Washington.

38. For example, Ohio, Rhode Island, South Dakota, Vermont, and Virginia.

motor carrier cases, but greatly increases the burden of the highest state court. Another advantage is that more able judges handle the case in the supreme court than would be found normally in the lower courts.

In view of the constitutional provision that commission cases be reviewed by inferior courts, the Colorado supreme court has refused jurisdiction over such causes and indicated its willingness to hear the case on appeal from the lower court;³⁹ only in case of injunction where the rights of parties could not be properly safeguarded in the district court should the supreme court in that state take jurisdiction over the review of the commission order.⁴⁰ The United States Supreme Court on November 21, 1927, ruled that issues of fact or of law essential to determining an appealed case must be settled by a lower court before it is taken to a higher tribunal. In this case an interstate carrier had sought in a United States district court an injunction against an ordinance of the city of Hammond, Indiana. The injunction had been denied by the lower court whose decree was reversed by the circuit court of appeals, the latter making no finding of fact, filing no opinion, and giving no reasons. The supreme court remanded the case to the district court "for further proceedings and final hearing."⁴¹

On February 20, 1928, the Arkansas supreme court dismissed an appeal for failure of the commission to file with the county circuit court a written motion for appeal to the state supreme court on the circuit court's setting aside the decision of the commission.⁴² This reveals that technicalities must be met.

Where an operator observes the decision of the commission which commission decision is later overruled, the operator will not be penalized for intervening operation, said the Colorado commission.⁴³

39. *Clark v. Denver & Interurban Ry. Co.*, 239 Pacific 20.

40. *Ibid.*

41. P. U. R., 1928A, 382.

42. *Arkansas Ry. Com. v. Galutza*, 2 S. W. (2nd) 1092.

43. *Re Giaconelli Bros.*, P. U. R., 1928A, 425.

The time within which an appeal may be taken is sometimes specified; for example it is 20 days in Indiana, 30 in Illinois and Iowa, 90 in Nevada and Louisiana. Virginia seems to grant the widest latitude, the period being one year. Notice to the commission is sometimes required.⁴⁴

It is required in Iowa that anyone seeking a review of a commission order must file with the district court a bond in the sum of \$500 to guarantee the costs of the suit; but the Louisiana act definitely states that no bond to guarantee the costs of court review shall be required.

What is the scope of the review? In Ohio it has been held that the court in reviewing a commission order will go into the records to determine whether the commission finding of fact is in keeping with the evidence introduced at the hearings.⁴⁵ The Ohio *General Code* authorizes a review to test either the reasonableness or the unlawfulness of the commission order,⁴⁶ and the same is true in Oklahoma.⁴⁷ Recently the Ohio supreme court went on record to the effect that it will not substitute its own opinion as to whether the public in a given area demand additional service so long as sufficient evidence supports the commission view.⁴⁸ Whether the extension of service sought is justified is a question of fact to be determined by the weight of evidence, said the court. We must call attention to the court's announcing its reluctance to substitute its own opinion for that of the commission so long as the latter is in keeping with the evidence; this court has quite frequently reversed the commission in the last few years.

The Illinois supreme court has held that the commission's

44. See Washington Supreme Court in 254 Pacific 245. Also regulatory acts of Iowa and Louisiana.

45. *Cincinnati Traction Co. v. Pub. Utils. Com.* (O. Sup. Ct.), 148 N. E. 921.

46. Section 544.

47. See N. A. R. & U. Coms'rs *Bulletins* 73, 1926, and 75, 1926, for two decisions of the Oklahoma Sup. Ct. in *Ex Parte Tindal*, and the *Rock Island* case.

48. *Buckeye Stages v. Pub. Utils. Com.*, 159 N. E. 561.

finding on whether the conditions of a certificate have been met is a judicial act and subject to review.⁴⁹ In Pennsylvania, the question of whether public convenience and necessity demands issuance of a certificate will be reviewed by the courts only to see that the commission decision was based on evidence proper and relevant;⁵⁰ but court review is not available to determine whether the commission exercised proper judgment in authorizing or refusing the certificate.⁵¹ Findings of facts are not subject to court review in California.⁵²

The reviewing court in Kentucky⁵³ is limited to these questions: (1) Did commissioner act within or beyond his power? (2) Was the order or decision of the commission secured by fraud? (3) Does the order or decision violate the regulatory act? (4) Were the findings of fact based on the evidence offered? Here is a definite, clear statement of the scope of the review.

Whether a particular operation is one over a regular route is usually a question of fact on which no review can be had.⁵⁴ The commission's selection between two applicants for a certificate is not to be disturbed in Washington, unless the commission findings show arbitrariness and "disregard for the material interests of the parties."⁵⁵ But such a selection is not subject to court review in Maine.⁵⁶ The Connecticut statute confers on the commission power to make the selection (a power usually possessed by the commissions) and the supreme court of errors in that state has held this power to be a purely administrative action and not subject to review on appeal.⁵⁷ No review on commission denial

49. *W. S. T. Co. v. C. & W. T. Ry. Co.*, 140 N. E. 56.

50. Rosenbaum & Lilienthal in *University of Pennsylvania Law Review*, June, 1927, 722.

51. *Ibid.*

52. *People v. Hadley*, 226 Pacific 836; see also *Bus Age*, May, 1927, 48.

53. Act of March 5, 1926, Sec. 18.

54. For example, in Maine, Michigan, North Dakota and Washington.

55. *United Auto Transportation Co. v. Dept. of Public Works* (Wash. Supreme Ct.), 223 Pacific 1048.

56. *Re Samoset Co.* (Me. Supreme Jud. Ct.), 131 Atl. 692.

57. *Modeste v. Conn. Com.* (117 Atl. 494).

of certificate can be secured according to a recent decision of the circuit court of Baltimore.⁵⁸ The court here held that issuing a certificate "is a purely legislative act, jurisdiction to review which cannot be vested in the judicial department," and that the aggrieved applicant has access only to the legislature for relief or redress.

The West Virginia law makes no provision for review of commission orders, but the action of the circuit court in reviewing the commission order awarding certificate to a non-rail carrier in preference to rail carrier was taken to the state supreme court, which tribunal said that the absence of provision for review did not preclude it.⁵⁹

In Virginia, Oklahoma, Arizona, Washington, and the District of Columbia, the courts have been empowered to modify the commission order or to substitute their own order instead. This "legislative review" has afforded satisfactory protection in several utility cases in Oklahoma. It appears that the United States Supreme Court has considered court substitution of its own order for commission order not judicial review, and consequently it would seem that this type of review will not meet the test of due process of law as provided by the Fourteenth Amendment. The language of Justice McReynolds in the *Ohio Valley Water Company case* (253 U. S. 287) points to the same conclusion.⁶⁰

While commissions enjoy ample power to require reports on motor carrier activity, in only a discouragingly few states has the power been so exercised as to secure comprehensive and incisive data. Statutory authorization and scope of inspection is sufficient, but machinery for making inspection a reality is hopelessly lacking in most jurisdictions. Perhaps the chief reason for this situation

58. N. A. R. & U. Coms'rs, *Bulletin* 71, 1926.

59. *Reynolds Taxi Co. v. Hudson*, and *Bartlett v. Hudson* (W. Va. Sup. Ct. of App.), 136 S. E. 833. February 8, 1927; also *Bus Transportation*, June, 1927, 359.

60. For a discussion of this question of legislative review, see Maurice H. Merrill in *Indiana Law Journal*, May, 1926, 247-60.

the apathy of the regulatory bodies and the motor carrier patrons. In most jurisdictions there is a tendency for the parties to a complaint to abide by the commission decision.

Penalties show a good deal of variance, as does the type of court to which an appeal lies from the commission decision. Likewise, no uniformity obtains as to the time within which the appeal may be taken. Certainly those statutes allowing only a short time emphasize vigilance on the part of the aggrieved. Although some statutes authorize court review of phases of the question not permitted by others, there is a tendency toward uniformity in exempting from court review such questions as whether the activity of a particular operator constitutes him a regular carrier. The view that issuing a certificate is a legislative function is met by the opinion that selections between two applicants is a purely administrative function. In concluding a summary of this chapter we must relate again that the silence of the statute as to court review of commission orders does not preclude such review.

PROCESS OF REGULATION: INTERSTATE

CHAPTER 15

STATE REGULATION OF INTERSTATE CARRIERS*

MAGNITUDE OF INTERSTATE OPERATION

As could be easily foreseen, motor transportation has not recognized the accidents of state lines. It was imperative that this transportation become interstate, especially in urban areas near state lines, such for example as New York City, Washington, Chicago, and St. Louis. Similarly, states like Massachusetts, Connecticut, New Jersey, and Rhode Island, because of smallness of area, were destined to become the scene of extensive interstate operations.¹

The mileage of interstate bus routes serves as one index to the magnitude of interstate motor carriage. Of the total 263,000 of common carrier bus route mileage in the United States, 48,362, or approximately one-fifth, is interstate. Of this interstate mileage, Oregon has 2,996; California, 2,895; Massachusetts, 3,000; Missouri, 3,491; and New Jersey, 4,488. We find, expressed in percentage of entire bus route mileage (interstate and intrastate), that interstate bus route mileage constitutes 32 per cent. in Oregon and Massachusetts; 40 in California; 62 in New Jersey; 70 in Rhode Island; and 93 per cent. in the District of Columbia. On the other hand, states with extensive total bus route mileage but only a small interstate percentage include Ohio, with 13 per cent., and Pennsylvania, with only six per cent.

*I published this chapter in *St. Louis Law Review*, February, 1929.

1. Motor transportation has become even international. See *Re Barnes* (Wash.), P. U. R., 1923E, 723; but more especially *Bus Transportation*, November, 1927, 658, and P. U. R., 1927D, 526. In the last citation the California commission held that it has no power to regulate motor carriers operating between a point in Mexico and a point in the United States.

2. *Bus Facts*, 1928, 8-9. See also *Facts and Figures*, 1927, 80.

Other indices are the number of interstate bus operators and the number of vehicles employed. There are 515 such carriers using 3,012 buses. The Northeast shows the greatest proportion of these;³ here are found 200 of the 515 carriers, and 1,339 of the 3,012 buses. Among the states in this region New Jersey leads with 63 carriers and 476 buses. Operating in Rhode Island are 60 motor carriers, 47 of whom are interstate.⁴ Intrastate buses in Rhode Island numbered 106 in 1926, while interstate totalled 109.⁵ More than half the buses operated in Colorado are interstate. In contrast one finds that only a small percentage of operators and vehicles are interstate in Pennsylvania, Ohio, and Washington State.

It appears that in 1926 there were engaged in interstate motor commerce approximately 25,000 trucks.⁶

But the "interstate" figures tend to minimize the magnitude of interstate carrier business, for often an interstate carrier engages the same vehicle in both interstate and intrastate carriage. As early as 1924 it appeared that only one-fourth of the motor transportation was interstate.⁷ Because of decisions of the United States Supreme Court in 1925 barring state denial of certificates to interstate carriers, the last three years has seen rapid increase in the number and volume of business of interstate carriers. Within one year after the *Buck* decision, 54 interstate lines sprang into existence between New Jersey and New York City and between New Jersey and city of Philadelphia.

3. Northeast here includes Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Ohio, Michigan, Indiana, Illinois and Wisconsin. See *Bus Facts*, 1927, 4; and 1928, 7-8.

4. *Ibid.*

5. Rhode Island Public Utilities Commission, *Letter*, February 25, 1926.

6. T. D. Pratt (representing 21 truck associations and 14 corporations and individuals), statement before the Interstate Commerce Committee, March 26, 1926.

7. Rosenbaum and Lilienthal in *Journal of Land and Public Utility Economics*, July, 1926.

EARLY EFFORTS AT REGULATION

The regulation of interstate motor transportation has undergone some rather discouraging vicissitudes already, and the experience seems by no means to be at an end. Until 1925 the states took toward interstate carriers pretty much the same regulatory attitude as toward purely intrastate carriers; since 1925 the states have been denied authority to refuse an interstate carrier a certificate to operate. Consequently, since there has been instituted no federal regulation, state efforts at regulation represent the sum total of control over interstate carriage; unexpectedly enough there have been placed in the path of these state efforts constitutional hurdles barring at least one phase of regulation and leaving those phases which went over the hurdles unnerved and uncertain. Today interstate motor transportation enjoys an immunity from effective regulation not dissimilar to that experienced by railroad transportation between the *Wabash* decision⁸ in 1886 and the passage of the Interstate Commerce Act of 1887.

Before 1925, the authority of the states to regulate interstate motor transportation was not seriously questioned. That authority rested on the doctrine in the leading case of *Gibbons v. Ogden*⁹ (1824) reinforced by the decisions in *Minnesota Rate Cases*¹⁰ (1913), *Hendrick v. Maryland*¹¹ (1915), and *Kane v. New Jersey*¹² (1916). As it stood till 1925, that doctrine permitted the states in the absence of federal legislation to prescribe for those phases of interstate commerce not demanding general or uniform regulation "reasonable provisions for local needs."¹³ Under this au-

8. 118 U. S. 557.

9. 9 Wheaton 1.

10. 230 U. S. 352.

11. 235 U. S. 610.

12. 242 U. S. 160. See also *Minnesota Law Review*, January, 1927, 157-62.

13. Invaluable on the question of interstate regulation is the article by C. M. Kneier in *National Municipal Review*, August, 1927, 510-19. Also B. C. Gavit in *Illinois Law Review*, February, 1927, 559-67. See also Ivan Bowen, "Danger Ahead from Federal Regulation?" in *Bus Transportation*, September, 1927, 489.

thority has been built up whatever regulation is applicable to interstate operation today.

STATE CANNOT DENY CERTIFICATE FOR INTERSTATE OPERATION

By 1925 it was a well-established administrative fact that an interstate carrier must have a certificate of public convenience and necessity to operate in a given state. This is attested by the decisions in both courts and state commissions.¹⁴ Failure to meet state terms resulted in denial of certificate in Pennsylvania in 1921.¹⁵ And twice the Illinois commission denied certificates to interstate carriers during the next three years.¹⁶ But as early as 1922 California sensed the possible conflict over interstate carriage and exempted from the commission order directing cessation of illegal operation of motor line that part of the service furnished by carrier which extended from a point in California to a point in Oregon.¹⁷

In 1923 Buck, a carrier of Oregon, applied to the Washington Department of Public Works for a certificate to extend his motor transportation line into Washington. The Washington statute empowers the commission to grant a competitive certificate only when the existing motor carrier or carriers are not furnishing adequate service and will not do so.¹⁸ Under this provision, the commission decided existent service sufficient and consequently denied Buck's application to operate into Washington. Buck took the matter to the United States District Court which upheld the commission.¹⁹ From this decision Buck appealed

14. *Chambersburg G. & W. St. Ry. v. Hardman* (Pa.), P. U. R., 1921C, 628; *Geneseo-Rock Island Bus Co. v. Hilbert* (Ill.), P. U. R., 1923E, 311; *East St. L. C. & W. R. Co. v. Dingerson* (Ill.), P. U. R., 1924C, 127; *Interstate Motor Transit Co. v. Derr* (Mont.) (1924), 228 Pacific 624; *Northern Pacific Ry. v. Schoenfeldt* (1923), 213 Pacific 26; *Schmidt v. Dept. of P. W.* (Wash.) (1923), 213 Pacific 31; *Re Engelke* (N. Y.), P. U. R., 1921C, 71; *People v. Barbuas* (1923), 230 Ill. App. 560.

15. First case in note 14.

16. *Geneseo* case and *East St. Louis* case as cited in note 14.

17. *Nevada-California-Oregon Ry. C. v. Pinneo*, P. U. R., 1925E, 421.

18. Ch. 111, *Laws of 1921*, as amended 1923, Sec. 4.

19. 295 Fed. 197 (1923).

to the Supreme Court, which on March 2, 1925, rendered a decision reversing the lower court and held that a state cannot deny a certificate to an interstate carrier on the ground that existent service is adequate. Justice Brandeis, speaking for the court, said that such denial was not to preserve the highways, but to prevent competition; that the requirement did not regulate the manner of use of the highways, but the persons who might use them.²⁰ The same day the court passed upon the validity of a Maryland denial²¹ of certificate to an interstate carrier. The Maryland act gives the commission power to investigate the question of granting a certificate and to deny or grant according to its findings.²² The commission had investigated and denied the certificate to an exclusively interstate carrier, who appealed. The Supreme Court held this denial as undue interference with interstate commerce and unconstitutional.

These two decisions destroyed the former doctrine of reasonable state regulation of interstate commerce in absence of Federal regulation insofar as power of state to deny a certificate is concerned. Since then no state has been able to deny an interstate carrier the privilege of operation over its highways.²³ Under the exigencies of interstate commerce a state has no more authority to deny admittance to an interstate carrier who comes to use state highways for private profit than to exclude from its territory a citizen of another state who wishes to establish residence within

20. *Buck v. Kuykendall*, 267 U. S. 308.

21. *George W. Bush & Sons v. Maloy*, 45 Sup. Ct. Reporter 327.

22. Sec. 4, Ch. 610, *Acts of 1916*, as amended by Sec. 3 of ch. 401, *Acts of 1922*.

23. The commissions have not been slow to recognize the significance of these two decisions. See for example *Cannon Ball Transportation Co. v. Pub. Utils. Com.* (O. Sup. Ct.), 149 N. E. 713, affirming commission order; *Re Schappi Bus Lines (Ind.)*, P. U. R., 1925E, 401; *New Hampshire Commission, Re Hart Motor Coach Co. and Re Spooner*, P. U. R. 1927C, 603; *Re Strait (S. D.)*, P. U. R., 1926B, 503; *Newport Electric case (R. I. Sup. Ct.)*, 129 Atl. 613; *People v. Yahme* (California Supreme Ct.), 235 Pacific 50.

its limits. The state is taught to say "Whosoever will use my highways in interstate transportation, let him come."

Varying attitudes are expressed by different states today as to whether a certificate must be secured by an interstate carrier. One group represented by Kentucky,²⁴ New York,²⁵ and Ohio²⁶ hold that the interstate carrier must secure the certificate. The Colorado commission has ruled that since the Supreme Court decisions have not denied the power of state commissions to grant certificates to interstate carriers, such power remains. The commission exercised this power in August, 1927.²⁷ Like Colorado is Montana, whose commission has declared its jurisdiction over applications for certificates by interstate carriers;²⁸ and similar is South Dakota.²⁹

A third group take a practical view of the question of certification of interstate carriers and declare that there is no use in going through the motion of certification; they make no pretense at requiring certification. In this group we find Massachusetts, whose statute specifically exempting from the local license and state certificate requirements has been upheld³⁰ by the supreme judicial court. Arizona is another representative of this third group. Recognizing that it could not deny the certificate, the

24. *Crigger & Stepp v. Allen* (Ky. Ct. of App.), 292 S. W. at 811, March 25, 1927. An interstate carrier without a certificate to operate in Kentucky cannot claim protection against unfair state or municipal impositions against him. *Northern Kentucky Transportation Co. v. City of Bellevue* (Ky. Ct. of App.), 285 S. W. 241.

25. *Re Brewster-Danbury Motor Bus*, P. U. R., 1925D, 307.

26. *Cannon Ball Transportation Co. v. Pub. Utils. Com.* (O. Sup. Ct.), 149 N. E. 713. More recently *Sciota Valley Ry. & Power Co. v. Interstate Motor Transit Co.*, May 10, 1927. P. U. R., 1927D, 724.

27. *Paradox Land and Transport Co.*, Decision 1399, August 12, 1927.

28. *Re Bennett*, P. U. R., 1927C, 595, March 16, 1927.

29. *Re Babcock*, P. U. R., 1927C, 603, June 30, 1926; *Re Crittenden*, P. U. R., 1927D, 733, and *Re Seeman*, P. U. R., 1927E, 534.

30. *Barrows v. Farnum's Stage Lines*, 150 N. E. 206 (1926). Similarly, the decision in *Commonwealth v. Potter*, 150 N. E. 213; this act has been held valid also by U. S. District Court in *Holyoke St. Ry.* case, 11 Fed. (2nd) 161 (1926). See also *Boston & Maine R. v. Cate*, 150 N. E. 210.

commission dismissed a petition from an interstate carrier.³¹ The Maine commission has ruled that the *Bush* and *Buck* decisions make a certificate for interstate operation unnecessary.³² Indiana is a fourth representative of the group holding that no certificate is necessary for interstate operation.³³ New Hampshire has stressed its inability to handle the interstate question as affected by the *Buck* and *Bush* decisions, the commission declaring January 4, 1926, that it has no jurisdiction over interstate motor carriers.³⁴ This commission ruled similarly on August 10, 1926, and dismissed a petition for certificate to operate a vehicle in interstate commerce.³⁵ While the commissions may vary in their attitude toward the necessity of securing the certificate, the essential point to be observed is that no state has authority to *deny a certificate* for interstate motor transportation. But the United States Supreme Court on May 31, 1927, ruled that a statute may require the interstate carrier to take out a certificate.³⁶

WHEN IS OPERATION INTERSTATE?

When is a motor carrier operation interstate in character? The New York supreme court of appeals sees as valid interstate operation the movement of a bus line beginning in New York City, going into New Jersey and thence back into Ulster County, New York.³⁷ Where a motor carrier operates 22 miles in Rhode Island and runs three and a third miles into another state for the primary if not sole purpose of avoiding changing buses between points within the state of Rhode Island, the operation was held

31. *Re Arizona Storage and Distributing Co.*, P. U. R., 1926D, 467.

32. *Re Maine Motor Coaches*, P. U. R., 1926B, 561.

33. Statement Chairman Singleton, June 7, 1927.

34. *Re Hart Motor Coach Co.*, P. U. R., 1927C (abstract), 603.

35. *Re Spooner* (abstract), *Ibid.*

36. On inability to deny certificates, see further *Re Strait* (S. D.), P. U. R., 1926B, 503; cases decided by New Hampshire and Maryland commissions, P. U. R., 1927C, 603-4; Ohio Supreme Court in *Cannon Ball Transportation Co. v. Pub. Utils. Com.*, 149 N. E. 713. The Ohio authority to require a certificate of interstate carrier was upheld in *Clark v. Poor* (U. S. Sup. Ct.), 71 L. Ed.

37. *Garrison v. Paramount Bus Corp.*, 227 N. Y. Supp. 510.

not to be interstate in the sense of the interstate commerce clause of the Constitution.³⁸ A carrier authorized to do interstate business only acts illegally when he takes a passenger from one point in a state to another in the same state, but just near state line, and sells him a ticket over an authorized line which takes the passenger across a river to a point a few hundred feet into another state. Such operation is not validly interstate.³⁹

Hauling a few interstate passengers at one end of his route does not transform the holder of an intrastate certificate into an interstate carrier, ruled the Pennsylvania commission.⁴⁰ Taking St. Louis passengers destined to Kansas City, Missouri, first to East St. Louis, Illinois, and thence back to Kansas City, Missouri, or taking Kansas City passengers destined to St. Louis first to Kansas City, Kansas, and thence back to St. Louis is only a subterfuge and is illegal.⁴¹ Subterfuges similar to those in the above case as practiced by the Detroit-Cincinnati Coach Line led the Ohio commission to cancel the certificate to do interstate business.⁴²

STATE CAN DENY CERTIFICATE TO INTERSTATE CARRIER TO ENGAGE IN INTRASTATE OPERATION

The *Buck* and *Bush* decisions failed to show the effect the state certificate requirement on the intrastate phase of business of an interstate carrier.⁴³ Several cases involving this question have subsequently arisen.

The order of the Maryland commission denying to an interstate carrier a certificate to engage in intrastate carriage has been upheld.⁴⁴ Likewise in New Hampshire a certificate is neces-

38. *Re Intercity Coach Co.* (R. I.), P. U. R., 1927E, 421-5.

39. *Sciota Valley R. & P. Co. v. Interstate Motor Transit Co.*, P. U. R., 1927D, 720.

40. *P. S. Com. v. Highway Motor Coach Co.*, P. U. R., 1927D, 309.

41. *Re Detroit-Chicago Motor Bus Co.*, P. U. R., 1928C, 103, 105.

42. *Re Detroit-Cincinnati Coach Line*, P. U. R., 1928C, 571-75.

43. *Minnesota Law Review*, January, 1927, 157-62.

44. *Washington Motor Coach Co. v. West*, P. U. R., 1927C, 603; also N. A. R. & U. C. *Bulletin* 71, 1926.

sary for an interstate carrier to engage in intrastate business.⁴⁵ Nor is it a burden on interstate commerce to deny authorization to an agency engaged in interstate operation to carry intrastate passengers ruled the Ohio supreme court.⁴⁶ In considering applications for intrastate operation by interstate carriers, the commissions of Maryland, Washington, and Colorado will be guided by factors of public convenience and necessity as if the applicant were not already engaged in interstate operation.⁴⁷ The Massachusetts act requiring local license and state certificates for intrastate operation is valid even when applied to interstate carriers desiring to engage in intrastate operation.⁴⁸

When an interstate operator makes application for an intrastate certificate irrelevant is the evidence that the community concerned has asked that interstate service be established,⁴⁹ said the Indiana commission. An order of the Colorado commission for a court injunction against an interstate carrier's proposal to engage in intrastate business does not affect his continuing to do interstate business. Had the commission order so sought to apply to the interstate part of the enterprise, such effort would have amounted to an interference with interstate commerce. But in the case at hand the Colorado supreme court made it clear that the state may prohibit an interstate carrier from doing intrastate business without thereby violating the commerce clause of the Constitution.⁵⁰ The South Dakota commission has withheld from an interstate carrier a certificate to engage in intrastate commerce.⁵¹

Similarly, the Missouri commission has said that an interstate

45. *Haselton v. Interstate Stages* (N. H. Sup. Ct.), 133 Atl. 457.

46. See *Cannon Ball* case, note 36.

47. Re Application of Red Star Line (Md.), case 2515; Nov. 29, 1926; Re Townsend (Col.), P. U. R., 1928A, 180; Columbia Gorge Motor Coach System (Wash.), P. U. R., 1928A, 119.

48. *Barrows v. Farnum's Stage Line* (Mass. Sup. Jud. Ct.), 150 N. E. 206, and similarly the same court in *Commonwealth v. Potter*, 150 N. E. 213.

49. Gold Seal Transit Co., P. U. R., 1927D, 166.

50. *Western Transportation Co. v. People*, 261 Pacific 1.

51. Re Seeman, P. U. R., 1927E, 534.

operator cannot demand the privilege of engaging in intrastate activity; and that authority to so do would not be granted where existing motor carriers and railways were furnishing adequate service and would suffer decreased traffic by the establishment of more intrastate competition.⁵²

The question of an interstate carrier's entering into intrastate carriage reached an early high point in *Interstate Buses Corporation v. Holyoke Street Railway*, decided by the United States Supreme Court on January 3, 1927. The appellant had resisted the Massachusetts law requiring certificates for intrastate operation. On having its drivers arrested at the instigation of defendant's employees for operating intrastate without the certificate, the appellant here sought from the United States District Court an injunction against the enforcement of the Massachusetts act. The injunction was denied, whereupon the bus company appealed to the Supreme Court. The reasoning of the highest tribunal was substantially this: (1) If the act "directly interferes with or burdens appellant's interstate commerce," it cannot be upheld; (2) the act, existing in some form before interstate operation developed, aims to apply to motor bus operation intrastate and local; (3) the statute does not demand the certificates of only interstate carriers as a class, but of all seeking to engage in intrastate business; (4) it is necessary for appellant to show that the state requirement prejudices his interstate commerce, which he has failed to do; (5) appellant has failed to show that it could not economically carry its intrastate passengers in separate buses. The court concludes that the act is not arbitrary or unreasonable; that due process of law has not been denied; and that an interstate carrier cannot evade state regulation of intrastate carriage by connecting its intrastate transportation to its interstate, or unnecessarily commingling the two types of business. In affirming the decree of the district court denying an injunction, the Supreme

52. *Re Pickwick Stages System*, P. U. R., 1928B, 1.

Court rebukes the appellant for not having tried to comply with the provisions of the statute.⁵³

Thus it follows unmistakably that to engage in intrastate operation, an interstate carrier must meet the terms of the state, so long as those terms impose no burden on interstate commerce.⁵⁴ But in so holding, the court was merely emphasizing a point which had already been stressed by several state agencies. The Indiana commission had earlier granted an intrastate certificate to an interstate carrier on the condition that the latter not charge less than the pre-existing carrier operating on the same intrastate route was charging.⁵⁵ In *Interstate Motor Transit Co. v. Derr* (1924) the Montana supreme court had held that all regulations by the state which are reasonable, which arise from the police power, and which are not violative of any act of Congress, can be applied to interstate carriage.⁵⁶ Similar was the declaration made by the Arizona commission the same year.⁵⁷

While deprived of their authority to deny certificates for interstate operation over its highways, the state yet enjoys power to establish proper regulations for the preservation of those highways, and to prescribe regulations for safety in the use thereof, so long as those regulations do not put on interstate commerce any unreasonable burden.⁵⁸ Our concern now is to inquire into the applicability of those state regulations which have been established and questioned as applicable to interstate operation.

53. *Interstate Buses Corporation v. Holyoke Street Railway*, 71 L. Ed. See also N. A. R. & U. C. *Bulletin* 2, 1927. The decision of the District Court is reported in 11 Fed. (2nd) 161. See also decision of Pennsylvania commission relative to state control of intrastate operation by interstate carrier in *Re E. H. Scott*, P. U. R., 1925D, 529, decided April 28, 1925.

54. On state regulation of interstate commerce (by motor vehicles) so long as not burdensome, see much earlier cases as *Packard v. Banton*, 264 U. S. 140; *Kane v. New Jersey*, 242 U. S. 160; *Hendrick v. Maryland*, 235 U. S. 610.

55. *Re Indianapolis-Cincinnati Bus Co.*, P. U. R., 1926D, 362.

56. 228 Pacific 624.

57. *Re Arizona Pacific Transit Co.*, P. U. R., 1925C, 501.

58. Justice Brandies, speaking for the Court in *Buck* case, 267 U. S. 308.

The general authority to so regulate has been expressed, subsequent to the great decisions, by several leading states. The California act was so amended in 1925 as to exempt therefrom interstate and foreign commerce,⁵⁹ but specifically reserved to the commission its power to prescribe such uniform, reasonable and non-discriminatory regulations as the commission deems warranted for public health, safety, convenience and welfare.⁶⁰ The supreme court of Ohio has had occasion to stress the validity of reasonable state regulation of interstate transportation by motor carriers.⁶¹ Likewise has the South Dakota commission.⁶² If the interstate transportation fails to meet the valid regulations set up by the state, it clearly appears that such transportation can be excluded from the highways of the state.⁶³ In the state of Washington the commission has cancelled a certificate for interstate operation because of a failure to meet the terms of the certificate, and this was done subsequent to the *Buck* decision.⁶⁴

The most important case of cancellation of interstate certificate to appear to date is that of the Detroit-Cincinnati Coach Line, decided by the public utilities commission of Ohio, March 26, 1928. The company was charged with seeking to avoid intrastate regulation by selling interstate tickets from Cincinnati to Monroe, Michigan, a small town just across the Ohio line, with the understanding that passengers could get out at Toledo. It was further charged that to passengers stating they wished passage from Toledo to Cincinnati the company answered that they must get a ticket to Covington, Kentucky. These charges were substantiated by witnesses. The commission viewed this part of the

59. Note 1.

60. Ch. 254, *Statutes of 1925*, 433.

61. *Scioto Valley Ry. Co. v. Interstate Motor Transit Co.* (O. Supreme Ct.), May 10, 1927, cited in P. U. R. 1927D, 720; also in *Cannon Ball Transportation Co. v. Pub. Utils. Com.*, 149 N. E. 713.

62. *Re Strait*, P. U. R., 1926B, 503.

63. Charles B. Elder, in *Illinois Law Review*, June, 1926, 166-70. He bases his conclusion on decision in *Red Ball Transit Co. v. Marshall*, 8 Fed. (2nd) 635; and *Duke case*, 266 U. S. 570.

64. *Re C. W. Lefors*, P. U. R., 1926D, 615, October 8, 1925.

conduct complained of as actually operating an intrastate business under an interstate certificate.

The commission also found that the company had violated state laws and rules by driving buses "at an excessive and dangerous rate of speed." Hearings were held at different points along the route and the company failed to refute the charges made against itself. Supporting its view by five United States Supreme Court decisions in point, one of its own previous decisions, and by one of the Ohio supreme court, the commission declared the certificate revoked, and ordered the line to cease operation within fifteen days.⁶⁵

In this decision, revoking an interstate certificate on the double grounds of subterfuge to evade intrastate regulation and persistent violation of the state speed laws, the Ohio commission lays down several points of significance: First, that state law and regulations can be applied to interstate motor operation so long as they are reasonable. This is no new doctrine in motor carrier regulation, for it had been announced in the *Buck* decision. Secondly, that no carrier authorized to do interstate business shall evade intrastate regulation by a mere subterfuge. Thirdly, that state police power is properly exercised in establishing reasonable safeguards against speeding on state highways, and that persistent violation of these constitutes valid grounds for revocation of the interstate certificate. Fourthly, that police regulations of the state must be observed by motor buses, interstate as well as intrastate, and finally that the authority granting a certificate has power to revoke it if the reasonable terms of the certificate are not met.

STATE EFFORTS AT REQUIRING INSURANCE OF INTERSTATE CARRIERS

Before 1925 there appeared a tendency to apply the insurance requirement to interstate motor transportation as well as to intra-

65. Re Detroit-Cincinnati Coach Line, P. U. R., 1928C, 571-75.

state. Such an exaction was upheld in Illinois⁶⁶ and Montana.⁶⁷ But in the *Liberty Highway* case in 1923 the United States District Court ruled that indemnity insurance constituted an unreasonable burden on interstate commerce and was therefore invalid.⁶⁸ Shortly after this the Ohio act requiring property insurance of interstate truck transportation was declared invalid by the same grade of tribunal.⁶⁹ The supreme tribunal has held invalid a state requirement of indemnity insurance on goods handled in interstate commerce under private contract.⁷⁰

All the above cases arising since 1925 involved the state requirement of insurance as applied to carriers of property. The insurance requirement as applicable to carriers of passengers in interstate commerce bade fair to be passed upon in *Clark v. Public Utilities Commission*,⁷¹ decided by the United States Supreme Court on May 31, 1927. The validity of Ohio requirements, including the insurance feature, was assailed by an interstate passenger carrier in the United States District Court, in which court the counsel of the Ohio commission answered that the state would not insist on the insurance provision. On appeal, the Supreme Court said that the insurance feature was therefore not up for consideration. In this manner a valuable opportunity to get a ruling from the highest court on the validity of insurance as applied to carriers of interstate passengers was frustrated. The "waiving" of the feature by the Ohio commission indicated clearly the view that previous rulings as applied to insurance on property carried in interstate commerce would be applied to passenger carriers were the state to insist on the point.

But in 1928 there appear three instances of state application

66. *People v. Barbuas*, 230 Ill. App. 560 (1923).

67. *Interstate Transit Co. v. Derr* (Mont. Sup. Ct.), 228 Pacific 624 (1924). In a note on page 515 of *National Municipal Review*, August, 1927, C. M. Kneier erroneously refers to this case as a California case.

68. 294 Fed. 703.

69. *Red Ball Transit Co. v. Marshall*, 8 Fed. (2nd) 635.

70. *Michigan Pub. Utils. Com. v. Duke*, 266 U. S. 570.

71. 71 L. Ed.....

of the passenger insurance requirement to interstate carriers. The Missouri commission has held that statutory requirements and administrative regulations relative to insurance must be met by interstate carriers as well as by intrastate.⁷² Holding that the statute requiring insurance of "motor vehicle common carriers" included interstate as well as intrastate carriers, the Indiana commission conditioned a certificate for interstate business upon applicant's complying with motor carrier insurance requirements.⁷³ In the same state an exclusively interstate carrier was validly required to furnish liability insurance against injuring persons other than the passengers carried.^{73*} On April 2, 1928, the Nebraska commission reasoned that passengers on interstate buses are entitled to the same degree of safety and protection as are those on an intrastate vehicle, and concluded the state was under constitutional obligation to protect the two types of passenger equally, and ordered interstate carriers to comply with the insurance requirement.⁷⁴ Communication with the Indiana and Nebraska commissions in late October, 1928, states that the interstate carriers are meeting the requirement, and are seeking no appeals from the commission decisions requiring insurance of them. Thus these state commissions are doing what the Ohio commission a year ago was afraid to insist on doing. The conviction of the interstate carriers is getting to be that it is good business to furnish insurance. Consequently we may expect them to continue to offer the protection.

ROUTINGS, SERVICE, AND SAFETY REQUIREMENTS

Under the *Buck* and *Duke* decisions, state regulations primarily to promote highway safety are valid exercise of the police power;

72. Re Pickwick Stages System, P. U. R., 1928B, 1.

73. Re Shore Line Motor Coach Co., P. U. R., 1928C, 175.

73*. *Sprout v. South Bend*, 48 Sup. Ct. Reporter 502; 72 L. Ed. (Adv.) 529.

74. Re Insurance Requirement for Motor Transportation Companies, P. U. R., 1928D, 396-7. Letter from the Indiana Public Service Commission, October 26, 1928, and one from the Nebraska State Railway Commission, October 30, state that interstate carriers are complying.

consequently it appears that licensing of drivers may be required.⁷⁵ But it has been held that a city cannot require the licensing of interstate drivers.⁷⁶ Routes of interstate carriers are specified in Kentucky, and the practice has been held valid in Rhode Island.⁷⁷ Not only routes, but also time schedule and speed are regulated in Kentucky. Where public safety so demands, speed may be regulated under the state police power.⁷⁸ The Michigan commission has been advised that under the Supreme Court ruling in *Clark v. Poor*, safety regulations applicable to intrastate carriers can be applied to interstate.⁷⁹

An unreasonable requirement appears in the *Schappi Bus Lines* case, decided by the United States Circuit Court of Appeals on March 12, 1926. An ordinance of the city of Hammond, Indiana, forbade the operation of motor vehicles on certain streets, and prohibited their stopping within several miles of the business center to load or unload passengers. General parking on both sides of the street was allowed, and a local motor bus was allowed by contract with the city to do that which the ordinance in question prohibited. The district court had refused the interstate carrier an injunction against the enforcement of the ordinance, whereupon the carrier appealed. The Circuit Court of Appeals declared the ordinance "unreasonable, discriminatory, and invalid as a police regulation," and ordered the district court to grant the injunctive relief sought.⁸⁰

75. Further evidence that such requirements are valid can be seen in *Smith v. Alabama*, 124 U. S. 465; *Hendrick v. Maryland*, 235 U. S. 615; and *Kane v. New Jersey*, 242 U. S. 160.

76. *International Motor Transit Co. v. City of Seattle* (Wash. Sup. Ct.), 51 Pacific 120.

77. *Newport Electric Corporation v. Oakley*, 129 Atl. 613.

78. *Southern Ry. Co. v. King*, 217 U. S. 524.

79. *Bus Transportation*, October, 1927, 597.

80. 11 Federal (2nd) 940. A similar case decided similarly the same day by this court is *Farina Bus Line and Transportation Co. v. City of Hammond*, *Ibid.* 943.

STATE TAXATION OF INTERSTATE CARRIER

From the beginning the Federal Courts have displayed a liberal attitude toward state exactions of fees from those operating motor vehicles in interstate commerce. A tax on horsepower of vehicles in interstate travel was justified by the Supreme Court on the basis of compensation for service rendered motorists and for wear he puts on the highway.⁸¹ In 1922 the United States District Court upheld a Washington statute demanding a minimum license fee of \$10 per vehicle plus 50 cents per seat for a vehicle of greater than eight capacity; the fee was required of all common carrier vehicles operated within the state.⁸² A fee of \$1 per cwt. required of all motor vehicles was valid as applied to interstate carrier vehicles, ruled the district court in a Michigan case in 1923.⁸³ The state could tax interstate carriers not only for cost of regulation, but for anticipated repairs to the highway, it was declared in an Ohio case.⁸⁴ But in the Michigan case, above, the court gave warning that the state could not demand a license to engage in interstate commerce as such.

A state may exact a reasonable graduate license tax from vehicles engaged in interstate commerce for the use of its highways; such is not an unreasonable burden on interstate commerce said the supreme court in the *Duke* case.⁸⁵

Reasoning that the state may properly classify motor carriers into interstate and intrastate and tax such differently, the United States District Court has upheld an act of Connecticut imposing a tax of one cent per mile run by interstate buses over Connecticut highways. The state possesses the authority to exercise reasonable discretion in taxation as here exemplified, and the

81. *Kane v. New Jersey*, 242 U. S. 160 (1916).

82. *Interstate Motor Transit Co. v. Kuykendall*, 284 Fed. 882.

83. *Liberty Highway Co. v. Michigan Pub. Utils.*, 294 Fed. 703.

84. *Red Ball Transit Co. v. Marshall*, 8 Fed. (2nd) 635. But a gross receipts tax as instituted by Idaho could not be applied constitutionally to interstate carriers. *Bus Transportation*, Feb., 1927, 52.

85. 266 U. S. 570.

courts will not revise the state system of taxation in order to secure a different distribution of the tax burden. The court also pointed out that the fact of the United States having aided in construction of a highway does not deprive the state of authority to impose an excise tax on interstate carriers using that highway. The Supreme Court affirmed the decision of the district court on February 20, 1928.⁸⁶

A recent act of New Jersey similar to that of Connecticut demands 1½ cents per mile tax. Failure to pay this resulted in barring from the highways some 300 interstate carriers by August 25, 1927. Up to September 2, 116 had complied; but 102 carriers secured injunctions against the enforcement of the act.⁸⁷ With the decisions in the Connecticut case, one can predict a decision favorable to the state.

An ordinance of Philadelphia exacting an annual license fee of all buses using its streets imposes no unreasonable burden on interstate commerce, when applied to interstate carriers.⁸⁸

Perhaps the most important tax case is that of *Clark v. Poor*,⁸⁹ decided by the Supreme Court on May 31, 1927. Clark was operating exclusively in interstate commerce between Aurora, Indiana, and Cincinnati. Under the Ohio act, he must secure a certificate and thereupon pay a tax based on the seating capacity of the vehicles used. Clark operated for a time in violation of the act, and then asked the District Court for an injunction against the enforcement of the act. The tribunal denied the injunction and Clark appealed. The gist of the Supreme Court's reasoning in

86. *Interstate Buses v. Blodgett*, 18 Fed. (2nd) 256, January 4, 1927. Supreme Court affirmation in 72 L. Ed.

87. *Bus Transportation*, October, 1927, 597.

88. *American Transit Co., etc. v. City of Philadelphia*, 18 Fed. (2nd) 991. See *Bus Age*, September, 1927, 40.

89. 71 L. Ed.—Following this decision the Indiana Commission was reported as preparing to apply to interstate carriers its seat tax. *Bus Transportation*, October, 1927, 597.

affirming the decree of the lower court is as follows: (1) Those who use the highways, which are public property, are subject to the state regulation requiring a contribution to their upkeep and cost, although these users may be engaged exclusively in interstate commerce; (2) the tax is not discriminatory since it is levied on interstate and intrastate carriers alike; (3) the tax is not an obstruction to interstate commerce; (4) the fact that some of the tax is used to pay the expenses of the commission enforcing the law and some for purposes other than commission expenses and cost and maintenance of highways is of no real concern to appellee. The Court concluded that the tax was "for a proper purpose and not objectionable in amount."

The significance of the *Clark* case lies first in the recognition of the public interest in the highways, and the enormous cost of construction and maintenance. Justices Brandeis, Holmes, and McReynolds just a year earlier had dissented in the *Frost* case, contending that public property in highways outweighs private property of a contract carrier operating over those highways. The *Clark* decision says in effect to common carriers in interstate commerce, "You cannot escape a fair share of the burden of financing the highway over which you carry on your business." Secondly, the tax, in contrast to the denial of a certificate, as was adjudged in the *Buck* case, does not obstruct interstate commerce. Here is clear, definite and unmistakable permission for the states to exact a fair amount from even interstate carriers for the outlays for highways. Thirdly, the states are under no minute requirements to devote every penny of this revenue from interstate carriers to the specific purpose of highway cost, or maintenance, or even to commission expenses. Lastly, the momentous conversion of the six members from a narrow view of private property rights as against public property rights, to a liberal and progressive conception of the primacy of public property rights—this conversion taking place in less than a year—

cannot be surpassed in American constitutional history.* Mr. Justice Brandeis speaks for a unanimous court!

STATE AND FEDERAL RIGHTS AND OBLIGATIONS WHERE
FEDERAL AID TO HIGHWAYS IS INVOLVED

Whether a certificate to engage in motor transportation be a regulation to conserve the use of the highway or a regulation of the business carried on over the highway is a question which has received some critical attention, and deservedly so, since the Supreme Court decision in one case held that the denial of a certificate for intrastate operation is a regulation of the use of the highway and in another the denial of certificate for interstate operation is not a regulation of the highway but a prohibition of competition.⁹⁰ That a highway in the absence of any special claim of the Federal Government is state property is indisputable.⁹¹ Constructed at enormous cost to the state,⁹² the highways are public property.⁹³

Where Federal aid has been made to highway construction the right and responsibility of the state in regard to the highway problem assumes a more complicated character. The relative rights and obligations of the state and Federal Government are

*Although Indiana and Ohio have had a serious truck "war," the *Clark* decision was welcomed by the *Indianapolis News* as a constructive, far-seeing and far-reaching decision. See editorial in *Ohio State Journal*, June 25, 1927. A favorable editorial in "The Atlanta Journal" was eagerly seized upon by the Atlantic Coast Line Railroad Company and incorporated into its leaflet, "Timely Railroad Topics," No. 187, July 4, 1927.

90. B. C. Gavit, "Interstate Motor Transportation," in *Illinois Law Review*, January, 1927, 559-67. It should be observed that in *Frost v. R. R. Com.*, 70 L. Ed. 1101, the majority opinion held that the aim of California requirement of certificate of public convenience and necessity was not preservation of highways, but regulation of business of those transporting thereover.

91. Gavit, *loc. cit.*, citing *Sims v. City of Frankfort*, 79 Ind. 446.

92. Dissenting opinion of Justice McReynolds in *Bush v. Maloy*, 45 Supreme Court Reporter 327.

93. *Clark v. Poor*, 71 L. Ed. It appears that the states have invested in the highways \$834,467,058. See *Operation and Maintenance*, July 15, 1927, 11. The Bureau of Public Roads indicates that Federal Government has spent some \$500,000,000 in highways.

to be found in the Congressional acts relative to highways, rules and regulations issued thereunder, and the interpretation put upon these acts by the courts. The state legislature having indicated its acceptance of the terms of the Federal legislation, the interrelations of the two spheres of government are substantially as follows: (1) The Secretary of Agriculture and the state highway commission are to agree on what roads are to be constructed, and the type and method of construction; (2) work in each state is to be done according to the laws of the state, under supervision of the state highway commission and subject to inspection and approval of the Secretary of Agriculture; (3) the state is to maintain the highway, and failure to do so necessitates maintenance by the Federal Government, the Secretary of Agriculture charging to state allotment the amount paid out for such maintenance and refusing all the projects for further construction in that state till the latter recoups the Federal Treasury for the amount spent because of state defaulting.⁹⁴

The extent to which the state power applies to the conservation and use of highways over which interstate carriers operate was early given a general delimitation by Justice Brandeis in the *Buck* case:

"With increase in the number and size of vehicles used upon a highway, both the danger and wear and tear grow. To exclude unnecessary vehicles—particularly the large ones commonly used by carriers for hire—promises both safety and economy. *State regulation of that character is valid, even as applied to interstate commerce, in the absence of legislation by Congress which deals specifically with the subject.*"⁹⁵

The substance of the portion italicized above was stressed by

94. *Morris v. DUBY*, 71 L. Ed., April 18, 1927; the Court refers to Federal Highway Act of July 11, 1916, ch. 241, 39 Stat. at Large, as amended February 28, 1919, ch. 69, 40 Stat. at Large 1189, 1200; and the act of November 9, 1921, ch. 119, 42 Stat. at Large, 212.

95. Italics are mine.

the Court in *Morris v. Duby*, two years later. Regulations of the type permitted by the *Buck* decision looking to conservation of highways have been upheld in Rhode Island,⁹⁶ and the imperative-ness of state conservation of highways has been more recently emphasized by the Supreme Court in the *Clark* case.⁹⁷

State regulation of the use of the highway can be legally instituted and applied so long as it neither "interferes with" nor "directly burdens" interstate commerce, said the court in the *Holyoke* case,⁹⁸ relying on the doctrine in the *Hendrick* and *Kane* decisions,⁹⁹ and on that in *Packard v. Banton*.¹⁰⁰

Turning now to specific applications of this general authority of the states to regulate the use of the highways we must recall that the insurance requirement as applied to property carriers in interstate commerce has been repeatedly declared beyond the power of the state,¹⁰¹ and that the highest court has not had occasion to pass upon the requirement as applied to the interstate passenger carriers.¹⁰²

In *Morris v. Duby*,¹⁰³ as in the *Buck* case, a Federal aid highway was involved. Morris, a member of the Auto Freight Association of Washington and Oregon, was hauling over a 22-mile section of the Columbia River Highway in the latter state. The state highway commission had by order reduced the maximum weight limit permitted on the highways from 22,000 pounds (which was the limit when Morris began operation and which had continued for four years) to 16,500 pounds. Morris, complaining that he could not compete with rail carriers under the new maxi-

96. *Newport Electric Corporation v. Oakley* (R. I. Sup. Ct.), 129 Atl. 613.

97. Note 93.

98. *Interstate Buses Corporation v. Holyoke St. Ry.*, 71 L. Ed., January 3, 1927.

99. 235 U. S. 610; 242 U. S. 160.

100. 264 U. S. 140.

101. *Liberty Highway* case, 294 Fed. 703; *Red Ball* case, 8 Fed. (2nd) 635, and *Duke* case, 266 U. S. 570.

102. Note 93.

103. Note 94.

mum load limit and that such order was an interference with interstate commerce, sought an injunction in the District Court, which pointed out the rights and obligations of the State and Federal Governments over Federal highways as mentioned above.¹⁰⁴ The Supreme Court reasoned that neither the state consent to operate over the highway nor anything in state or Federal statutes supported appellant's claim to a contract to operate his vehicle forever under the weight limit existent at the time he began operation; that the preservation of the highways is of more importance than a motor carrier's offering competition to a rail line. Further, that since there was no averment or definite information that the commission order reducing the load limit had been secured by fraud or abuse of power, the court would accept the commission order as proper. The tribunal concluded that the order was neither unreasonable, discriminatory, nor arbitrary, and affirmed the decree of the District Court denying an injunction against the enforcement of the order.

Summarizing now as to state regulation of interstate motor transportation, we observe first that the state cannot deny a certificate for interstate operation; and that much divergence of opinion prevails among the states as to whether the formality of securing such certificate must be observed. Secondly, that the state cannot demand liability insurance of carriers transporting only property in interstate commerce; but that insurance requirements as to carriers of passengers in interstate commerce protecting nonpassengers has been held valid.

Thirdly, that taxation imposed by a state on interstate carriers to recoup for facilities offered carriers by the state is valid. This may include registration of vehicles used,¹⁰⁵ as well as seat tax or tax on horsepower or bus-miles operated. State power to make these exactions is not impaired by the fact that the United

104. Substance referred to by note 94.

105. Ivan Bowen, "Danger Ahead from Federal Regulation?" in *Bus Transportation*, September, 1927, 490, citing *Hendrick* case, 235 U. S. 810.

States has aided in the construction of the highway involved. (*Blodgett* case, 18 Fed. [2nd.] 256.)

Fourthly, that weight restrictions may be imposed in order to safeguard and conserve the highways; and, fifthly, that a general power to regulate may be exercised by the state so long as such is reasonable and not an undue burden on interstate commerce, there being no Federal legislation on the matter.

But in spite of the state authority to regulate interstate motor carriers, the consensus of opinion seems overwhelming that the states cannot regulate them effectively and that Federal regulation of interstate transportation is necessary and inevitable. To the movement for Federal regulation we now turn our attention.

CHAPTER 16

FEDERAL REGULATION OF INTERSTATE MOTOR CARRIERS

THE MOVEMENT FOR FEDERAL REGULATION

The constitutional basis for Federal regulation of interstate motor transportation is at least two-fold: The fact that such transportation is interstate commerce and the fact that the Federal Government has a general welfare interest (including post road functions) in the highways. This interest in the highways is revealed in the completion already of fifty-six thousand miles of Federal Aid highways, and the projection of more than two hundred thousand miles of new construction. Federal expenditures for this purpose have already amounted to about five hundred million dollars, almost one hundred million being expended in the year 1926.¹

In the inability of the states to regulate interstate operation satisfactorily,² and the resulting chaotic condition of interstate regulation lies the practical basis for Federal regulation. Let us examine some of the evidences of need for Federal regulation.

The prohibition of state denial of certificates to interstate carriers has stripped the state of its most effective weapon of regulation. Highways are at the mercy of interstate vehicles which may grind them to pieces while the state, unable to restrict the number of carriers which shall operate on a given highway, looks on as a helpless observer. So far as certification is concerned a "no man's land" was created by the *Buck* and *Bush* decisions. That effect was not unobserved for long, as is evidenced in the New York City-New Jersey region where in less than a year fifty-four interstate carriers sprang into existence.

1. *Facts and Figures*, 1927, 47.

2. At the Kentucky-Tennessee Bus Association, July 25-27, 1927, E. J. Meeman, editor of *Knoxville News-Sentinel*, characterized state regulation of even intrastate operations as a failure. Recent charges against Frank L. Smith, Chairman of Illinois Commerce Commission, relative to the connection between utilities with cases before the commission and excessive expenditure in primary suggest improprieties, to say the least.

Particular sections are in dire need of regulation of interstate operation. The situation in the New York City-New Jersey area mentioned above, and in the New Jersey-Philadelphia region has brought forth the introduction into Congress in April, 1926, of the Reed-Bachrach³ bill for limited interstate operations. Small states like Massachusetts and Rhode Island have a big percentage of interstate operation; and urban areas around Chicago, St. Louis, and Washington, like these small states, feel the need for Federal regulation.

Some serious conflicts have arisen between states whose dissimilar schemes of regulation have produced a good deal of hostility. The most notorious is the Indiana-Ohio "truck war." To Indiana truckers it was not practical to take out Ohio certificates to haul intermittently into Ohio; hauling thereinto without such certificates resulted in the wholesale arrest and jailing of Indiana drivers. Yet Indiana by not requiring the certificate for this type of truck activity became an area for such activity for Ohio trucks. Conferences of utility authorities, and "cool heads" have avoided clashes in the region of the boundary line.⁴ State retaliation as to interstate operation damages the service and gives an opportunity to the unauthorized operator.⁵

Uncertainty of the extent to which states may go in exacting service of interstate carriers demands Federal regulation as a corrective. Rate slashing by interstate carriers has proved particularly disastrous in certain regions.⁶ The contests over state

3. See *New York Times*, April 6, 1926.

4. For details of conflicts because of diversity of state regulations, see the testimony before the Interstate Commerce Committee of the U. S. Senate, March 22 and 23, 1926, by ex-Governor W. L. Harding, of Iowa, Clyde H. Jones, member of the Indiana public service commission, and of W. B. Hiner. *Hearings* before the above committee, hereafter referred to as *Hearings*.

5. See editorial in *Bus Age*, September, 1927, 47.

6. For example, between Detroit and Chicago. When service between these points began a fare of \$7.50 was charged; this was \$2.31 less than train fare for the 237 miles. By the time eight competing lines got into the rate cutting the fare fell as low as \$2.50. See Amos A. Betts in P. U. R. D., special section, 9.

requirement of insurance protection for interstate passenger and property business, while the conflict seems to be subsiding somewhat recently, evidence further the necessity for Federal control.

The frequent resort to subterfuges in order to avoid state regulations as applicable to intrastate operation reveals another point of argument for Federal control. Driving two hundred and fifty feet into another state, fixing routes so as to include a few hundred yards of the territory of another state, and in so doing passing no point more likely to produce passengers than a nearby cemetery, or placing stations just over the state line running through a small town—these are some of the subterfuges resorted to.⁷ These merely indicate the limits to which the motor carrier will go in order to escape regulation—to get into no man's land.

FEDERAL REGULATORY MEASURES PROPOSED

Interest in the regulation of interstate motor transportation has reached Congress. Five bills looking to Federal regulation have been introduced. The first of these, the Cable bill⁸ authorizing the Interstate Commerce Commission to issue rules and regulations applicable to interstate motor carriers, was introduced in the House on March 3, 1925, and of course died with the expiration of the sixty-eighth Congress the next day. To regulate interstate carriers between New York City and Jersey City using the tunnel under the Hudson River and similar agencies using the Delaware River bridge between Philadelphia and Camden, New Jersey, was the purpose of the Bachrach bill introduced into the House on April 6, 1926.⁹ The same bill was introduced in the Senate the next day¹⁰ by Senator Reed of Pennsylvania. The House bill was never reported from Committee; but in the Senate

7. For examples of interstate subterfuges and the state efforts at handling them, see P. U. R., 1926B, 545 (Maine); P. U. R., 1926B, 612, and P. U. R., 1926E, 370 (R. I.); and P. U. R., 1927C₃, XVI (Ohio).

8. *Congressional Record*, 68 Cong. 2nd Sess. 486. Cable bill was designated H. R. 12474.

9. *Ibid.* 69 Cong. 1st Sess. 7004; designated as H. Bill 11055.

10. *Ibid.*, 7008.

not only was it reported favorably,¹¹ but it passed that body and was sent to the House,¹² there to die of neglect.

After the *Buck* and *Bush* decisions the National Association of Railroad and Utility Commissioners, seeing that Federal regulation must come, appointed a committee to draft a regulatory measure. This work was done chiefly under the direction of the Association's General Solicitor, John E. Benton. Representatives of rail lines, electric and steam, state utility commissions, and the bus operators were called into conference.¹³ The bill formulated was introduced in the Senate December 16, 1925, as S. 1734, by Senator Cummins,¹⁴ and referred to the interstate commerce committee. This committee devoted eight days to hearings thereon.¹⁵ Consequently, we must give this measure more than passing notice.

The bill would include within the scope of Federal regulation both property carriers and passenger carriers operating in interstate commerce over definite routes and those operating over irregular routes as well. To administer the law state regulatory commissions would be used. These would grant certificates to interstate carriers, bona fide operators on effective date securing them as a matter of right. Ten days notice to parties in interest would be necessary before hearing applications for other than "bona fide operator" certificates.

In the consideration of granting or refusing a certificate, existence and adequacy of service, type of service proposed by applicant and the likelihood of its proving permanent and continuous and the effect of granting the certificate on existing transportation agencies must be taken into account.

11. *Ibid.*, 9077.

12. *Ibid.*, 9247.

13. Bus Division, *Proceedings of First Annual Meeting*, Philadelphia, June 15-16, 1927, 14.

14. *Congressional Record*, 69 Cong. 1st Sess. 904. The bill was introduced in the House by Representative Parker, January 23, 1926.

15. Resulting testimony is published as *Hearings—on S 1734*.

Certificate tenure would be indeterminate. Restrictions as to load weight, continuity and adequacy of service, the matter of pick-up service at local and intermediate points may be prescribed, and such other conditions as public convenience and necessity may demand.

Transfer of certificate could be made by the state commission on petition of transferer and transferee. Personal heir of grantee could succeed to the certificate on death of grantee.

The bill prescribes liability protection for both passenger carriers and property carriers. The amount would be determined by the regulatory body, and the bond or insurance must be made payable to the United States. Waiving the liability protection requirement would be permissible on sufficient evidence of financial ability to pay damages assessed.

Rates must be just and reasonable, and not unduly discriminatory. Filed rates may be protested by any person or corporation, private or municipal, agricultural or mercantile company or civic body. Rates found to be unfair are to be modified to the level of reasonableness. Fees collected by the state commissions would be turned over to the Interstate Commerce Commission, which body would be empowered to grant members of state agencies a per diem allowance.

In questions involving matters of concern to more than one state, action would be taken by joint boards of the state commissions concerned. From either the single or joint agency appeal lies to the Interstate Commerce Commission, and would be limited to the record as certified by the lower body.

Such, in brief, are the features of this important bill, the substance of which is *mutatis mutandis* largely an embodiment of the provisions of the state regulatory acts. To the eight-day hearings on this bill came members of utility commissions of the states,¹⁶ representatives of the bill from among the drafters and

16. Clyde H. Jones, of Indiana Public Service Commission; Ivan Bowen, of Minnesota Railway and Warehouse Commission; J. J. Murphy, of South Dakota Commission.

sponsors of that bill,¹⁷ representatives of truck operators, and operators themselves,¹⁸ representatives of the rail lines,¹⁹ chambers of commerce,²⁰ and merchants associations.²¹ (Although apparently not invited to the drafting of S 1734, the shippers did get into the hearings). In all, forty-one witnesses offered testimony, which covers three hundred and twenty-five pages of close print.

Among those who favored regulation and especially regulation as outlined in the bill naturally enough one finds the rail interests, and the bus interests which were well-established. Ex-Governor Harding, of Iowa; Thomas H. MacDonald, Chief of U. S. Bureau of Public Roads, and Dudley Farrand, representing railway and motor transportation companies in New Jersey, appeared favoring Federal regulation of some type, but not definitely committed to S 1734. The first named stressed the need for drawing up the rules for the game before the game begins and thereby lent point to the advisability of instituting interstate regulation before great vested interests are developed in motor transportation.

Chief opposition to regulation and especially to the scheme as set forth in S. 1734 appeared representatives of the shippers, of the truck operators, and Commissioner Bowen of Minnesota. Shippers' arguments stressed the flexibility of truck service as not lending itself to rate fixing, a point to which the truck operators themselves devoted much attention. Commissioner Bowen expressed fear of Federal regulation as destructive eventually of the last vestige of state control over even local transportation. "Once let Federal power step in and that's the end of state authority" seems to sum up his attitude.²²

But the bitterest opposition was voiced by the truck operators,

17. Particularly John E. Benton, S. A. Markel, and Charles Webster.

18. H. E. Manghum, S. I. Lipp, W. B. Hiner, Clinton Robb, H. S. Shertz, T. D. Pratt, H. T. Bush, A. T. Marsh.

19. B. B. Cain, E. W. Hebel, and H. A. Taylor.

20. W. H. Day.

21. W. H. Chandler.

22. See also his article, "Danger Ahead from Federal Regulation?" in *Bus Transportation*, September, 1927, 489.

who contended that the industry is in its infancy, operation is primarily of local, short-haul nature, that adequate information was not available as a basis for fair regulation, and that it is impossible to prescribe rates for truck service the nature and cost of which can never be determined till the customer requests the particular service.²³

Truck operators announce a particular grievance against the bill because it was drawn by rail interests. The certification provision and the exclusion of pick-up service were especially odious to truck interests. One truck operator characterized the purpose of the bill as not regulation, but "strangulation."²⁴

Whether regulation should be carried out by state commissions acting under Federal authority with appeal to the Interstate Commerce Commission was a much disputed point. Sponsors of the bill urged the use of state bodies on the grounds of experience and ability of those bodies and the view that the Interstate Commerce Commission was overburdened. An occasional bus operator joined in with this line of argument.²⁵ But in the main, truck operators took the ground that if Federal regulation must be instituted such should be done by Federal agencies directly.²⁶

Seldom does a proposal involving a departure from the established order (or disorder) go far without being arrested on grounds of unconstitutionality; S. 1734 was no exception. Early in the hearings a belief in the unconstitutionality of the bill was manifested by the truck operators.²⁷ Members of the committee such as Senators Goff, Fess, and Mayfield indicated their doubt of the constitutionality of state agencies being able under state law to act in the administration of Federal law. There was

23. Senator Fernald quickly espoused the tenability of this argument.

24. A. T. Marsh.

25. For example, J. H. Awtry, representing Southern Bus Association.

26. See, for example, testimony of J. M. Lennon, R. T. McKenna, H. T. Bush, J. E. Dunningham, and W. B. Hiner.

27. S. I. Lipp, and H. S. Shertz.

raised also the question whether Congress could delegate power as provided in the bill. Chairman Watson entertained serious doubt as to the constitutionality of the bill, while T. H. MacDonald of the Bureau of Public Roads voiced doubt as to whether the United States has authority to regulate the use of highways, and foresaw serious conflicts between the Federal and state governments over the matter.

To the feared unconstitutionality of using state commissions as agencies to administer Federal law the proponents pointed to the practice of using state agencies to administer the naturalization laws. Practical considerations as basis for proposed use of agencies with appeal to the Federal commission were also emphasized in the course of the hearing as being more feasible than leaving the whole task to the overloaded commission at Washington, or creating separate regional Federal agencies in different sections of the country.

But the bill was never reported from committee. To the committee the restrictions in the bill seemed both unreasonable and destructive to interstate motor transportation. No substitute bill could be agreed upon.

Determination of the proponents of S. 1734 has not ceased with the failure of the committee to report out that bill. On December 22, 1926, Representative Denison of Illinois introduced as House Bill 15606²⁸ the S. 1734 of the preceding session with only a few changes.

Among the palliative modifications offered by the proponents appear the omission of the provision of the former bill that rates should be "not unduly discriminatory" and of the requirement that in fixing rates the regulatory body must take into account the character of the proposed service, the necessity therefor, and the effect of such rate on those of existent transportation agencies. These concessions emphasize the restrictiveness of the former bill.

28. *Congressional Record*, 69 Cong. 2nd Sess. 962.

Further protection of established carriers is quite pronounced in the Denison bill. The regulatory body is given more discretion in deciding on whom it will serve notice relative to hearings on pending applications for certificates. The established motor carrier is to be given ample opportunity to make adequate his service before a competing certificate will issue. Motor carriers on regular routes may be allowed by the regulatory agency without further certificate to engage in irregular operation so long as to do so does not impair the regular service. Such a provision aims at bringing irregular operation under the control of the carriers transporting over regular routes. Finally, the certificates issued can be suspended or revoked for *wilful* violation of the provisions of the bill or of rules and regulations made pursuant thereto. The Denison bill was not reported out by committee.

The question of Federal regulation was to be discussed and proposals therefor were to be made at the meeting of the United States Chamber of Commerce at Washington in May, 1927.²⁹ The Chairman of the Legislative Committee of the Bus Division writing in October, 1927,³⁰ favored the provisions for Federal regulation as contained in the Denison bill, and announced that another bill would appear in the Seventieth Congress. On March 24, 1928, Representative Parker, of New York, introduced³¹ House bill 12380. This bill seems to have resulted from the recommendations made by Examiner Flynn³² following the investigation of the interstate motor problem as discussed below.

INTERSTATE COMMERCE COMMISSION SEEKS INFORMATION ON MOTOR TRANSPORTATION

But private initiative has no monopoly of interest in interstate motor carrier regulation. The Interstate Commerce Commission in 1926 circularized the Class I railways of the country with a

29. *Bus Age*, May, 1927, 48.

30. S. A. Markel in *Bus Transportation*, October, 1927, 546.

31. *Congressional Record*, 70th Cong. 1st Sess. 5534.

32. C. D. Cass in P. U. R., 1928D₄, 17-22.

questionnaire calling for data on the relation between the particular road and motor vehicles owned or leased by it and operated in line or terminal service; also for data on those operated in competition with the rail line. The answers to this questionnaire were compiled in tabular form by the Commission in December, 1926, as Docket 18300.³³

Nor is this questionnaire all. Apparently on its own motion³⁴ the Commission in 1926 undertook a series of regional hearings in thirteen cities,³⁵ the purpose of which was to secure information on which to base Federal regulation of interstate motor transportation. These hearings extended from late July to the last of October. Five thousand pages of testimony was taken from parties in interest.

Throughout 1927 there was much anticipation as to the recommendations which would be made to Congress on basis of the evidence adduced at the hearings. In his report Examiner Flynn recommended in January, 1928, a system of regulation of which the following were the chief features: (1) Requirement of certificate of public convenience and necessity to operate; (2) exaction of liability insurance to protect passengers and the public; (3) fair rate regulation; (4) setting up adequate machinery to secure proper control of interstate motor carriers. The Parker bill, referred to above, embodied these recommendations to a marked degree. It would utilize the state commissions to administer the regulation. The state commissions and the carriers concerned were satisfied with the bill. The National Automobile Chamber of Commerce opposed and delayed the bill. The result was that in the end-of-the-session rush the House Committee on Interstate

33. This compilation I have used freely in my chapter on "Motor Carrier and Rail Carrier."

34. Neither the Interstate Commerce Committee nor any act or resolution of Congress actuated this undertaking by the I. C. C. J. W. Anderson, secretary to Senator Wheeler, *Letter*, December 5, 1927.

35. Chicago, St. Paul, Portland, San Francisco, Los Angeles, Denver, Detroit, Boston, New York, Asheville, Dallas, and Kansas City.

and Foreign Commerce voted May 15, 1928, to lay the bill on the table.³⁶

Interest in the matter of Federal regulation of interstate motor carriers is not at all failing. Regulation along the lines of the Parker bill was extensively discussed at the convention of the Bus Division in Cleveland on September 25, 1928. The Bus Division endorsed the regulative program as proposed in the Parker bill. The legislative committee of the National Automobile Chamber of Commerce, meeting in joint session with the Bus Division, continued to voice opposition to the Parker bill. President A. J. Brosseau of Mack Trucks and chairman of the legislative committee of the N. A. C. C. repeatedly stated the view of his committee that regulation should not go beyond the requirement of certificates of public convenience and necessity. It was arranged that a further meeting be held later in the fall to iron out, if possible, the points of conflict to which the N. A. C. C. yet objects. A concerted effort is being made at the date of writing (November, 1928) to round up all those interested so as to present a united front in order to secure Federal regulation at the approaching short session of Congress.³⁷

From the facts of motor carrier regulation as surveyed in this study, and from the efforts toward and the proposals for Federal regulation, one is led to the conclusion that Federal legislation on the interstate phase is imperative, and that such legislation should embody at least the following provisions:

1. Utilize the state commissions as administrative agencies, with provision for joint state boards, and also for appeal to the Interstate Commerce Commission.
2. Require certificates of public convenience and necessity for common carriage of property as well as of passengers in interstate commerce. In authorizing

36. Reference in note 32; see also *Bus Transportation*, June, 1928, 351.

37. *Bus Transportation*, November, 1928, 617.

motor service, give first consideration to established carriers, rail or motor. Allow certificates as a matter of right to interstate carriers in bona fide operation on effective date.

3. Secure adequate service from interstate carriers, acting generally on the principle of regulated monopoly and not on that of competition.
4. Institute reasonable rate regulation, with wider latitude in regard to the charges made by carriers of property.
5. Demand liability protection from carriers of property and of passengers, with administrative discretion to waive the requirement in lieu of financial ability to pay assessed damages arising in the course of operation.

CHAPTER 17

PRINCIPLES OF REGULATION*

Having considered the process of regulation, we must now inquire into the principles discernible in that process.

A most evident principle is that of public service. The application of this principle is exemplified in the campaign to bring under certificate requirements all carriers for hire operating over regular routes. Further, the regulatory efforts at supervising routings, schedules, and rates evidence this principle of public service. Requiring recipient of certificate to show financial ability is another safeguard to adequate public service. "Service First" is not only an admirable slogan for the wideawake carrier, but also the recognizable watch-word of the regulatory agency.

Is the securing of proper public service to be sought through the principle of competition or that of monopoly? The *Annual Digest*¹ for 1915 is practically silent on competition between rail and motor carriers or between motor carriers themselves; but the *Digest* for 1920 shows that the contest is on in reality; by 1927 sufficient data are available to warrant some analysis and conclusions.

What constitutes competition in the motor carrier field involves more discretion than in some fields of public service. The difficulty of determining what is competition has been recognized by commissions. If a bus makes four trips daily within 100 yards of a particular point, that point is within occupied territory, said the Washington supreme court;² to authorize another service to the particular point would create competition.

In the New England region there has appeared recently a strong preference for regulated monopoly. Maine has condemned motor competition with rail lines seeking post-war economic read-

*This chapter I published in *American Law Review*, January-February, 1929.

1. To *Public Utility Reports*.

2. 206 *Pacific* 21.

justment.³ Where one carrier was adjudged sufficient, New Hampshire refused to authorize a second.⁴

The purpose of the New York act of 1915 was to protect against "unfair and ruinous competition of jitneys," declared the commission of that state in 1916.⁵ Yet the same agency ruled four years later that objection to establishing more bus lines was insufficient grounds for denying applications therefor.⁶

Pennsylvania in 1923 recognized the competitive and non-competitive fields of motor carrier activity. Its policy of requiring a recipient of certificate not to compete with other carriers has received court approval as justifiable protection against harmful competition.⁷ Two years later it was ruled that a second certificate should not be granted where no improvement of service would result.⁸ Thus this commission accepts public service as an index in choosing between competition and monopoly. It tends to favor monopoly.⁹

As early as 1920 Maryland expressed the view that in order to earn a fair return on his investment, a vigilant carrier should be allowed protection against "unnecessary, undue, and indiscriminate competition."¹⁰

The Ohio law does not aim at "unrestricted competition between motor carriers," but to see that public service is kept adequate to public needs; additional service will be authorized only when existent service is insufficient and existent carrier is given a 60 day opportunity to make his service adequate.¹¹

Holding that the highways are subject to whoever wishes an

3. *Re Maine Motor Coaches*, P. U. R., 1926B, 545.

4. *Re Carpenter*, P. U. R., 1925C, 288.

5. *Re Troy Auto Car Co.*, P. U. R., 1917A, 704.

6. *Re Hubbard*, P. U. R., 1920F, 377.

7. P. U. R., 1923C, 295.

8. *Re Bly*, P. U. R., 1925D, 71.

9. *Re Bush*, P. U. R., 1925C, 1.

10. *Re Dean*, P. U. R., 1920C, 974.

11. *General Code*, 614-91; *Sciota Valley R. P. and L. Co. v. Pub. Utils. Com.* (O. Sup. Ct.), 154 N. E. 320; *Coney Island Bus Corp. v. Pub. Utils. Com.* (O. Sup. Ct.), 152 N. E. 25.

opportunity to operate thereover, the Illinois commission early refused to grant an exclusive certificate for a given route.¹² In spite of that provision of the Illinois Commerce Commission Law¹³ stating that a certificate shall not be construed as an exclusive authorization to operate over a given route, the state supreme court has held that (1) the policy of the public utility act is not to encourage competition between common carriers; (2) proposed lower rates of bus are insufficient grounds for granting a certificate to compete with a rail line, whose revenue decreasing from such competitive certificate would necessitate an increase in rates.¹⁴ In several subsequent decisions in Illinois this attitude toward competition is expressed.¹⁵ A commission order granting a certificate where to do so would be unfair and confiscatory to existent carrier has been set aside by the state supreme court.¹⁶ More recently the court has stressed the monopoly view in regulating public utilities in *Egyptian Transportation System v. L. & N. Ry. Co.*¹⁷

The rules and regulations of Kansas and Colorado are to the effect that granting a certificate for a particular route constitutes no exclusive privilege to operate thereon.¹⁸

Montana decisions are decidedly away from further competition, whether parties involved are motor carriers or rail carriers.¹⁹ A similar trend is observable in South Dakota.²⁰

Before regulatory acts were instituted competition of the most severe type had developed. Intensive and extensive competition

12. *Re Auto Transportation Co.*, P. U. R., 1919C, 627.

13. Section 55.

14. *W. S. T. Co. v. C. & W. T. R. Co.*, 140 N. E. 56 (1923).

15. *Re Packard De Luxe Lines*, July 10, 1923; *Re Kipps Express and Van Co.*, June 26, 1923; Decisions 13058, 13115, and 13162, September 6, 1923.

16. *S. M. Bus Co. v. C. M. Bus Co.*, 150 N. E. 668 (1926).

17. 152 N. E. 510.

18. *Kansas Rules and Regulations*, Rule 2; *Colorado Rules and Regulations*, Rule 3.

19. *Re Weir*, P. U. R., 1926C, 629; *Re Simms-Great Falls Freight Service*, P. U. R., 1926C, 818; *Butte-Anaconda Express*, P. U. R., 1926C, 492.

20. *Re Munk*, P. U. R., 1926C, 417; *Re Mortsfield*, P. U. R., 1926D, 108.

has had its fling in the Indianapolis region, but recently the Indiana commission has displayed a determination to put on the applicant for a certificate the burden of proving existent service inadequate.²¹ Where the evidence failed to show that existent carrier would suffer material loss the Colorado Commission has refused to deny a competitive certificate.²² Although two carriers are operating over the same route already, the Ohio commission will grant a further certificate if public convenience and necessity demands.²³

As early as 1919 California showed a tendency to tighten up on applications for competing certificates,²⁴ and its views are not different in 1922²⁵ and 1924.²⁶ The commission declared in 1927 that "it is not sound policy" to establish a motor carrier line "which will ultimately drive the existing line into bankruptcy."²⁷

Although competition yet exists in many sections, an examination of the administrative records of the last few years reveals a definite trend to check competition and to favor regulated monopoly in motor transportation and as between motor transportation and rail transportation.²⁸

While statutes may sometimes provide against monopoly, and some of the commission and court decisions point toward competition, the weight of recent administrative practices is definitely in the direction of monopoly. Consolidation is both a cause and a manifestation of monopoly. To not only consolidating carriers,

21. Re Newcastle Transit Co., P. U. R., 1926B, 185, is an example.

22. Re Paradox Land and Transport Co., P. U. R., 1926B, 824.

23. *Cincinnati Traction Co. v. Pub. Utils. Com.* (O. Sup. Ct.), 148 N. E. 921.

24. A. R. G. Bus Co., P. U. R., 1919E, 238.

25. Re Hempstead, P. U. R., 1922D, 490.

26. P. U. R., 1924D, 835.

27. Re Overall and Askin, P. U. R., 1927C, 393.

28. For example, the 1924 records show this tendency in Ohio, *McLain v. Pub. Utils. Com.*, 143 N. E. 381; Montana, White Star Line, P. U. R., 1924B, 193; Re Kocin, P. U. R., 1924C, 214; Re Turner, P. U. R., 1924D, 483; and Re Broadhead, P. U. R., 1924E, 222; Pennsylvania, Re Jones, P. U. R., 1924A, 540; Re Scott, P. U. R., 1924B, 208; and Re Flough, P. U. R., 1924D, 862; Colorado, Re Rhoads, P. U. R., 1925C, 303.

their employees, and investors is this move toward monopoly an advantage. Taxpayers in general and private car owners are interested in restricting the number of public vehicles which shall be authorized to operate over the highways; the former, in less wear on the highways and consequently less maintenance cost; the latter, in less congestion of highway traffic. Preservation of the highways demands that the number of vehicles operating as public carriers be limited to the lowest possible minimum.²⁹

Closely associated with, if not actually a part of the principle of monopoly is that of protection for established carriers. In New York³⁰ and Pennsylvania³¹ appeared early manifestations of this. Established rail lines and bus lines were protected in Iowa, because of hurtful competition which would result from authorizing another carrier;³² and a steam line whose revenues were rapidly decreasing was protected against proposed motor competition in Colorado.³³ Here two steam lines and one electric were competing between Denver and Fort Collins. This attitude was equally marked in a decision four years later.³⁴

Public welfare is to be served best by retaining and protecting the existent carriers who are willing to provide proper service, according to a Wyoming decision.³⁵ Reliability of existent carriers entitles them to consideration is another argument. Public convenience and necessity demands protection for existent carriers said the California commission.³⁶ In the State of Washington the business of a vigilant carrier is to be protected.³⁷

Among the states emphasizing more strongly the principle of protection of existent carriers are California, Illinois, Ohio, and

29. For the view of a great jurist on this matter, see Justice Brandeis in the *Buck* case.

30. Re Ashmead, P. U. R., 1916D, 10.

31. Southern Pa. Traction Co. v. Hartell, February 26, 1917.

32. Re Ft. Dodge, D. M. and S. Transportation Co., P. U. R., 1926C, 19.

33. Re Donovan, P. U. R., 1921D, 494.

34. Re Salters, P. U. R., 1926A, 114.

35. Re Salt Creek Transportation Co. v. Apgar, P. U. R., 1926A, 180.

36. Re United Stages, P. U. R., 1925A, 696.

37. Re Krakenberger and Rinne, P. U. R., 1926D, 386.

Massachusetts. The latter not only would protect the established rail carrier, but may require the rail line to offer the service necessary rather than authorize competition therewith. A rail line may be authorized to establish bus service not only in connection with its rail service, but independent thereof.³⁸ That the well-established carrier is to be protected against competition and allowed to establish motor service where such is necessary is recognized as a sound principle by the ten states which by legislation have provided for rail lines entering the bus field.³⁹

In passing from the principle of monopoly and protection of the established carrier we are to observe that they gained recognition and acceptance first in those areas where transportation problems became acute at an early date—generally in the east. Further, that the rail carrier tends to become the best favored and protected carrier in many sections. Finally that the non-rail carrier must be vigilant as to service needs, and observant of requirements relative to such matters as taxes and insurance.

A fourth principle is public safety. This has proved an important one, and has actuated many regulatory measures. Requirements as to types of equipment, condition of equipment, speed of public vehicles, stopping at railroad crossings, licensing of drivers, and prescribing their conduct, prohibiting transportation of dangerous articles, and specifying liability protection—all these merely evidence the importance of the principle of public safety. This principle is recognized not only by state agencies, but also by the United States Supreme Court.^{39a}

Publicity in carrier affairs has found expression in requirements of publication of filing application for certificate and of approaching hearing thereon, posting of time and rate

38. *Re N. Y., N. H. & H. R. R. Co.*, P. U. R., 1916D, 161. This attitude of protecting rail lines is more recently stressed in *Bartlett v. Hudson* (W. Va. Sup. Ct.), 136 Atl. 833.

39. *A. E. R. A. Bulletin* 120, XVII. These states are Alabama, Georgia, Indiana, New Hampshire, New Jersey, New York, Oklahoma, Rhode Island, Texas and Vermont.

39a. Opinions in *Duke* and *Buck* Case (266 U. S. 570 and 267 U. S. 308).

schedules, and publishing notice of request for changes in those schedules, or for modification of other terms of the certificate. Exacting from carriers reports as to their activities is further evidence of this principle. Supervision of issuance of motor carrier securities also attests the principle of publicity in carrier affairs as well as protection of the investing public.

Around the protection and preservation of the highways one finds a group of principles of regulation. State authority over the highways has long been acknowledged, and measures designed for their protection have been upheld, even when applied to interstate transportation.⁴⁰

Authority of the state to grant or withhold the privilege to use the highways for other than the ordinary use has been upheld repeatedly; no one enjoys a "right" to operate a public vehicle over the highway; permission so to use the public thoroughfares is a privilege.⁴¹

Public regulations restricting competition and favoring monopoly tend to limit the number of public vehicles allowed on the highways.⁴² Authorizing consolidation of existent carriers may lead to a limitation if not a reduction of the number of public vehicles operated. Any measure which restricts or lessens the number of vehicles operated is an aid to the ultimate preservation of the highways.

40. For Arizona case, P. U. R., 1926D, 569; *Gilmer v. Pub. Utils. Com.* (Utah Sup. Ct.), 245 Pacific 284; *Interstate Motor Transit Co. v. Kuykendall*, 284 Fed. 882 (1922); *Duke and Buck* cases, note 39; *Interstate Buses* case, P. U. R., 1927B, 46; *Morris v. Duby*, 71 L. Ed.

41. *Melconian v. Grand Rapids* (Mich. Sup. Ct.), 218 Mich. 397 (1922); *San Antonio v. Fetscher* (Tex. Sup. Ct.), 241 S. W. 1034; *O. L. R. & L. Co. v. Henry* (Nebr.), P. U. R., 1922B, 72; *Carson v. Woodram* (W. Va.), 120 S. E. 512; *Ex Parte Dickey* (W. Va.), 76 W. Va. 576; *Ex Parte Cardinal*, 170 Calif. 519; *Hadfield v. Lundin*, 98 Wash. 657; *Dresden v. Wichita*, 96 Kansas 820; *Huston v. Des Moines*, 176 Iowa 455; *Buck v. Kuykendall*, P. U. R., 1924B, 297; *Frost v. R. R. Com.*, 70 Calif. Decisions, decision 3707; *Arkansas v. Independent Bus Lines* (Ark. Sup. Ct.), July 12, 1926; *Hester v. Ark. R. R. Com.* (Ark. Sup. Ct.), 287 S. W. 763; *Gilmer* case (Utah), note 40.

42. Of course the state may permit existent carriers to employ more vehicles.

Placing limits on the dimensions of vehicles allowed on the highway is a second respect in which preservation of the highways is exemplified. Here the aim is definitely to conserve the use of the highway. Maximum width of vehicles permitted on the highways ranges from 84 to 108 inches, about two-thirds of the states specifying 96 inches as the maximum.⁴³ Expeditionousness and safety in highway traffic depends greatly on the relation between width of road and width of vehicle. A maximum height of vehicles has been prescribed in fifteen states, the range being from 12 to 13 feet, most states preferring 12½ feet. Length of vehicles is more important from the standpoint of use of the highway. Maximum length of single vehicular units ranges from 28 to 40 feet, with 30 feet proving the favorite maximum. Maximum length for combination of vehicular units is prescribed in seventeen states. The range is from 60 to 100 feet, with 85 feet as the favorite maximum length of a combination of primary unit and trailers.

The relation between the longer vehicle and the use of the highway has been recognized recently by the Massachusetts house of representatives which by the narrowest margin killed a bill to increase the maximum length of vehicle from 28 to 33 feet.⁴⁴

Limits on gross weight of vehicles using the highways forcefully reflects the principle of preservation of the highways. In prescribing the maximum gross weight the states range from 15,000 pounds to 30,000; much preference is expressed for 20,000 as a maximum, though ten states fix the maximum at 28,000. This range in weight limits suggest a noticeable variation in types of highway. In prescribing maximum weight, several states take into account the type of tire used on the vehicle.

State laws and regulations look to the preservation of the highways in providing for raising or lowering the maximum limit

43. On width, height, and length of vehicles see *State Restrictions on Motor Vehicle Sizes, Weights and Speeds*, 1927.

44. *Bus Age*, May, 1927, 48.

as road conditions demand and permit. Softness of highway due to either newness or seasonal changes should not be overlooked by regulatory bodies in prescribing weight limits. As the type of road is improved, the weight limit can very well be raised. The exercise of power to raise weight limits demands both engineering knowledge and administrative caution.

Some degree of uniformity among states as to limits on maximum dimensions and weight of motor vehicles, and especially public carrier vehicles, constitutes one of the outstanding needs of the present time. In this question are involved the proper share of the private car in the use of the highways, promotion of public safety, consideration of carrier interests, and the preservation of the highways. The Motor Vehicle Conference Committee recommends as uniform maximum dimensions: width, 96 inches; height, 14½ feet; length of single vehicle, 33 feet, with combination limited to 85 feet. Gross weight of a four-wheeled vehicle should be limited to 28,000 pounds.⁴⁵

Precautionary measures are insufficient to preserve the highways. Inevitably all vehicles, and especially the heavy common carrier vehicles, subject the highways to wear and tear. Consequently remedial measures exacting taxes from those who use the highways as thoroughfares of private business must be resorted to. Although the state need not apply to highway maintenance all the revenues derived from special taxation of motor carriers, it is by far the rule to spend such money for highway purposes. Thus taxation of public carrier vehicles exemplifies the principle of preservation of the highways.

Only a few decades ago the construction and maintenance of roads was looked upon as largely a function of the county government. But within a brief period motorization of travel has appeared and ushered in the movement for improved highways. As the length of the travel or traffic trip has increased with motorization, more pronounced has become the demand for im-

45. Note 43.

proved, standardized highway facilities, and greater freedom from local restrictions. Today the construction and maintenance of highways is a function of the state, and it is only logical that the making of regulations for their use has shifted to the state government. Thus centralization of control of highways and their use and the business carried on thereover appears as a principle in the regulation of motor carriers.

Along with the usual municipal authority to regulate carriers operating exclusively within municipal limits, one occasionally finds some degree of control over intercity motor transportation. A leading example of this is found in Massachusetts, where it is necessary to secure town or city consent to operate motor service as a prerequisite to obtaining the state certificate. This consent is to be evidenced by signature of mayor or selectman; liability protection must be filed with the local unit. The legislature has resisted pressure to put into hands of the state commission authority to check competition between rail and motor carriers contrary to the local authorities.⁴⁶

Where the state law of New York requires municipal consent to establish motor service, no mandamus would issue to force a city to grant its consent.⁴⁷ This municipal consent is transferable by the recipient.⁴⁸ It has been held in Ohio that local authorities may establish reasonable police regulations applicable to intercity motor carriers so long as the service is not impaired thereby.⁴⁹

In Indiana it is the duty of the state commission to so co-operate with the local authorities in routing of vehicles as to avoid traffic congestion.⁵⁰ Municipal authority to route, park, and regulate speed and safety of all motor transportation vehicles through municipal jurisdictions is protected by the Minnesota

46. *Re East Taunton St. Ry. Co.*, P. U. R., 1923E, 791.

47. *Dobeson v. Mescall* (N. Y. Ct. of App.), 199 N. Y. S. 801.

48. *Re Graves*, P. U. R., 1920E, 132.

49. *Nelsonville v. Ramey* (O. Sup. Ct.), 148 N. E. 694.

50. *Re Peoples Motor Coach Co.*, P. U. R., 1926A, 386.

Act.⁵¹ The Washington supreme court has ruled that state law on motor vehicles merely supplements city ordinances already existent, and do not supersede them.⁵²

Although local units may prescribe reasonable regulations on motor carriers under the police power, local control of these transportation agencies has been declared subordinate to the rules of the state agencies. The Massachusetts commission said that local traffic should be left to local control until that control should affect the operation of the business as a whole irrespective of locality; the state commission is to judge when this has happened, and its decision must prevail over the local rules and regulations.⁵³

State supremacy over the operators within municipalities finds expression in New Jersey. The act of 1916 requiring every city jitney to pay to the city 5 per cent. of its gross receipts and to furnish indemnity insurance in the amount of \$5,000 was held valid.⁵⁴ Where the legislature had conferred on the state commission authority over motor buses a subsequent city ordinance reducing the bus fare from ten to five cents was held invalid.⁵⁵ While municipal home rule leaves a good deal of control over motor carriers to the cities, centralization of control seems to be the rule.⁵⁶

Centralization of control finds abundant emphasis in the question of who is to fix restrictions on the speed of motor vehicles operating through municipalities. A few states, Kansas and Missouri, for example, leave the matter to local authorities. In a small number of states local authorities under certain restrictions may fix the speed limit; examples of this are South Dakota and Tennessee. But thirty-two state statutes prescribe

51. *Minnesota Laws*, 1925, Ch. 185, Sec. 18.

52. *Sound Motor Transit case*, 206 Pacific 93.

53. *Re Union St. Ry. Co.*, P. U. R., 1919C, 905.

54. *Re Becker*, P. U. R., 1921E, 502.

55. *Morrison v. Town of West New York* (N. J. Sup. Ct.), 136 Atl. 175.

56. Lilienthal and Rosenbaum in *Journal of Land and Public Utility Economics*, July, 1926.

the speed at which motor vehicles shall operate in even municipal areas.⁵⁷

Of all the states California affords perhaps the best example of the process of centralizing control over motor carriers. The original act required the intercity operator to secure from county supervisors and municipal authorities consent to operate through their jurisdictions. Two years later this provision was repealed.⁵⁸ Consequently no local consent is necessary to establish an intercity motor service.⁵⁹

The original act of 1917 makes the ruling or order of the California commission superior to any city or county ordinance, and an affirmative interpretation has been put upon the provision in at least two cases.⁶⁰ The superior power of the state commission has been declared in Colorado, whose supreme court has ruled that the commission may authorize service through counties without their consent in spite of a state act requiring county consent in all cases where load will be greater than eight tons, there being in the case at hand no expressed purpose to use vehicles of the eight-ton load type.⁶¹

Nor is the trend toward centralization confined to the state-local sphere of regulation. As the localities are yielding to state control of motor carriers, likewise does the movement for Federal regulation propose to remove from state authority control over interstate carriers. Court decisions, and congressional bills together with the voluminous hearings on Senate Bill 1734 point unmistakably to that solution of the problem of regulation.

Within the state, centralization of motor carrier regulation, as of other phases of administration, is the keynote. But we do not find any such pronounced development as to the principle of

57. *State Restrictions on Motor Vehicle Sizes, Weight, and Speeds.*

58. Auto Stage Truck and Transportation Dept. *Report*, 1924-5, 18; also the acts of 1917 and 1919.

59. Re Stages, P. U. R., 1925A, 704.

60. Re Transportation Companies, P. U. R., 1918B, 309; Re Miller, P. U. R., 1927A, 630.

61. *People, etc., v. Loveland*, 77 Colorado 42.

integration of that state control. While there are discernible some signs of uniting the various phases of motor carrier regulation in the hands of one agency in the state, there exists altogether too much division of authority among many agencies. Why should examining and licensing bus drivers, requiring more rigidity than authorizing drivers of private cars, be put upon the secretary of state? Why should the recipient of a certificate to operate motor carrier service have to visit the department of state to obtain his bus tag authorizing his operation as a public carrier? These are but examples of divided control which has insufficient foundation in logic. Kentucky has made a progressive step in putting the issuing of certificates, the granting of license tags to operate public carrier vehicles, and the licensing of drivers all into the hands of the state commissioner.

Integration of control must remain a matter of relativity. Such matters as assessment and collection of taxes do not logically belong to the public utility commission. But in motor carrier regulation there is need today for more integration of control over related phases of administration. This principle aims at lessening administrative conflict, and securing more harmonious working of administrative machinery. The fact that it has been prominently recognized and adopted in the field of general state administration, particularly since 1917, is not an irrelevant argument that it should be applied in the specialized field of motor carrier regulation.

CHAPTER 18

SUMMARY AND CONCLUSIONS

Motor carrier regulation finds its *raison d'être* chiefly in the necessity of preserving the highways and in furnishing service as demanded by public convenience and necessity. With these objectives in mind, the states have set about regulating motor carriers. Legislation, beginning in earnest about 1921, has taken the form of a modification of existent utility laws so as to make them applicable to motor carriers, or of separate, specific acts designated *de novo* for them. In a few instances construction of existent statutes has sufficed to subject the carriers to control.

Regulatory legislation has aimed primarily at the intercity carrier operating over definite routes or between fixed points and so holding out service to the public as to constitute a common carrier. In determining who is a common carrier the commissions have not avoided making legal errors. Less attention has been given the irregular carrier, who, operating between no definite points or on no regular route, yet cuts into the business of the certified carrier. But in several states the activity of this type of carrier has been sufficiently important to demand regulatory attention.

Unauthorized carriers, known as "gymps," "wildcat operators," or "snipers" have plagued the certified carrier, who has served effectively as informer and thereby aided in the elimination of these "outlaws."

Authority to operate a public motor service is evidenced by a certificate of public convenience and necessity. Around the granting of this certificate much formality if not technique has developed. Experience has shown that the procedural requirements for certificates must be met, and that compliance with requirements must be observed by the bona fide operator on effective date in so far as he is subject to those requirements. In some areas there are certificate routes yet to be preempted; in others the

formal task of granting certificates to establish service is in great part a *fait accompli*.

Requirements for licensing of drivers and for safety in the operation of public motor vehicles are generally sufficient in *substance*. Licensing of drivers takes on too much of an empty formality; more serious administration is needed here. Schooling drivers in regard to their responsibility to the public, whose lives are daily in their care, has resulted in a decrease of accidents; continuance of this method on a large scale will do more to further public safety than the formal requirements as to age and citizenship of drivers. Some are capable of driving a public vehicle at sixteen years of age; there are others who never will be. Much emphasis is put on strength; too little on strength of character. Let us cast aside the nineteenth century idea that the biggest brawn makes the best policeman. Public service, public safety, and private profits to the carrier hinge around the oftentimes sole representative known to the public—the driver. Encouragement as to the calibre of the future driver lies in the establishment of drivers schools, the progressive attitude of many managers, and observations in different sections convincing the writer that a driver can combine personal appearance, mechanical and business efficiency, and gentlemanly courtesy.

Liability insurance on passenger carriers and property carriers in intrastate operation has been required, and the requirements upheld. The former as applied in interstate transportation has been upheld as required for protection to nonpassengers; the latter has been declared non-applicable in interstate carriage. Liability protection, however, is recognized as necessary in proposed Federal legislation.

The public is more interested in motor service than in the cost thereof. Regulatory bodies recognize this demand for proper service and are setting up satisfactory standards. Little or nothing has been done toward systematic rate-fixing, and there is no reason to believe any radical turn will be made in the immediate future.

States differ much as to the grounds for revocation of certificates. Power to revoke is becoming a momentous one as the business existing under a certificate expands; exercise of this power calls for great caution. There seems to be no general objection to the manner in which it has been exercised thus far.

Several decades passed before public policy demanded even a pretense at publicity in railway affairs. But we live in a different age; not one decade has passed before a hopeful beginning has thus been made in regard to motor carrier activity.

Motor transportation of passengers and property is demanded today by the exigencies of social and industrial life. The relief granted by the public carriers to private individuals eliminating the necessity of driving and parking a car in congested areas bids fair to become more appreciated.

Consolidation among motor carriers has come into importance and will be one of the outstanding characteristics of the development of the future. While there is some evidence that motor carriers desire to retain their separateness from rail lines, the fact that many states have enacted statutes to allow rail lines to engage in motor service, and the extent to which rail lines have gone already in establishing motor service, together with the growing attitude of regulatory agencies toward protecting the established carriers—all this points to a possible if not probable eventual rail control of motor carriage. And also the trend in the general field of utilities toward monopoly supports this conclusion.

As motor carrier operation became intercity, it has also become interstate. The time has arrived when, under our constitutional system, the Federal Government must take over the regulation of the interstate phase of motor transportation. State experience in the railway field fifty years ago proved beneficial to the Federal Government when it undertook railway regulation. In like manner will state experience serve as a guide to Federal regulation of interstate motor transportation.

Successful membership on a regulatory body requires specialized training, fairness in attitude, seriousness of purpose, and security of tenure. Legislators can only sketch the scope and methods of regulation; courts exercise authority over the process in only the relatively few cases brought before them. The burden of success or failure of regulation depends primarily on the personnel and authority of the regulatory agency.

Effectiveness of regulation must be viewed as a relative matter. Measured by this standard, a hopeful beginning has been made in the field of motor carrier regulation.

SOURCES

I. DOCUMENTARY—

A. STATUTORY :

American Electric Railway Association Bulletin 120, *State Regulation of Motor Vehicle Common Carriers*. This is a collection of the state regulatory statutes as of January 1, 1927.

California: *Public Utilities Act*, with amendments.

Minnesota: *Laws of the State of Minnesota Relating to the Railroad and Warehouse Commission*, with amendments through 1927.

North Carolina: Senate Bill 630, 1927, effective June 30, 1927.

Ohio: *Laws of Ohio Relating to the Public Utilities Commission*.

Oregon: *Public Service Commission Code; Motor Vehicle Laws*, 1925.

Pennsylvania: *The Public Service Company Law*, with amendments through 1925.

Washington: *Washington Compiled Statutes* (Remington).

B. BILLS INTRODUCED INTO CONGRESS :

Cable Bill, H. R. 12474, 68 Cong. 2nd Sess.

Bachrac Bill, H. R. 11055, 69 Cong. 1st Sess.

Cummins Bill, S. 1734, 69th Cong. 1st Sess.

Denison Bill, H. R. 15606, 69th Cong. 2nd Sess.

Parker Bill, H. R. 12380, 70th Cong. 1st Sess.

C. LEGISLATIVE PROCEEDINGS :

Congressional Record

68 Congress, 2nd Sess. 486.

69 Congress, 1st Sess. 904.

69 Congress, 1st Sess. 7004.

69 Congress, 2nd Sess. 962.

70 Congress, 1st Sess. 5534.

Hearings Before Committee on Interstate Commerce :

U. S. Senate on S. 1734,

69 Congress, 1st Sess.

D. ADMINISTRATIVE REPORTS :

Public Utilities Reports, 1915—

Interstate Commerce Commission: *Motor Bus and Motor Truck Operation*, Docket 18300, Washington, December, 1926.

California: Auto Stage and Truck Transportation Department, *Annual Report*, 1924 and 1925; Railroad Commission *Report*, 1926.

Minnesota: Auto Transportation Company Division, *Biennial Report*, 1925-6.

Oregon: Public Service Commission, *Eighteenth Annual Report*.

Washington: Department of Public Works, *Sixth Annual Report*.

E. RULES AND REGULATIONS:

Arkansas: Railroad Commission, *Rules and Regulations*.

California: Railroad Commission, *Rules of Procedure*.

Colorado: Public Utilities Commission, *Rules and Regulations*.

Iowa: Board of Railroad Commissioners, *Rules and Regulations*.

Kansas: Public Service Commission, *Rules and Regulations*.

Maryland: Public Service Commission, *Rules and Regulations*.

Michigan: Public Utilities Commission, *Rules and Regulations*.

Ohio: Public Utilities Commission, *Rules and Regulations*.

New York: Public Service Commission, *Rules of Practice*.

II. PERIODICALS—

A. LEGAL:

Elder, Charles B, Comment section of *Illinois Law Review*, June, 1926, 166-70.

Gavit, B. C., "State Highways and Interstate Motor Transportation," *Illinois Law Review*, February, 1927, 559-67.

Lilienthal, David E., and Rosenbaum, Irwin, "Motor Carrier Regulation by Certificates of Convenience and Necessity," *Yale Law Journal*, December, 1926, 163-94. "Motor Carrier Regulation in Ohio," *University of Cincinnati Law Review*, May, 1927, 288-335. "Motor Carrier Regulation in Pennsylvania," *University of Pennsylvania Law Review*, June, 1927.

Merrill, Maurice H., "Does 'Legislative Review' by Courts in Appeals from Public Utility Commissions Constitute Due Process of Law?" *Indiana Law Journal*, May, 1926, 247-60.

Minnesota Law Review, "Notes," January, 1927, 157-62.

Ohio Law Review, January 31, 1927.

Stason, E. B., "The Indeterminate Permit for Public Utilities," *Michigan Law Review*, February, 1927, 354-95.

B. OTHER PROFESSIONAL:

Bus Age, February, 1927, 44; April, 1927, 39, 41-2; May, 1927, 34, 39; August, 1927, 34-6, 48; October, 1927, 41.

Bus Transportation:

Achtley, E. B., "Maintenance Cost and Accidents Reduced by Training Drivers," October, 1927, 573-4.

Bowen, Ivan, "Danger Ahead from Federal Regulation?" September, 1927, 489-93.

Markel, S. A., "Why I Favor Federal Interstate Regulation," October, 1927, 545-6.

Parker, Leo T., "Buckeye Case Analyzed," June, 1927, 318-20.

Also Notes and items in issue of February, 1927, 52, 61, 89-92, 115; March, 1927, 178, 181; May, 1927, 290, 298; June, 1927, 359; July, 1927, 379-81; October, 1927, 596, 597; November, 1927, 658, 659; December, 1927, 701; June, 1928, 351; September, 1928, 514; November, 1928, 617.

Journal of Land and Public Utility Economics:

Lilienthal and Rosenbaum, "Motor Carriers and the State," July, 1926.

Slater, J. E., "A Study of the Motorbus as a Competitor of the Railway," April, 1926, 125-55.

Motor Coach Transportation, July, 1926, 22; September, 1926, 12.

National Municipal Review:

George, John J., "Kentucky Advances in Motor Coach Regulation," September, 1927, 568-71.

Kneier, C. M., "The Regulation of Interstate Motor Transportation," August, 1927, 510-18.

Operation and Maintenance, July 15, 1927, 11.

III. PAMPHLETS—

American Automobile Chamber of Commerce *Bulletin*, July 11, 1927. *Reports on I. C. C. Hearings, July-October, 1926*. These report-digests were issued on the hearings separately.

Bus Division of American Automobile Association, *Bus Facts* for 1927; 1928, 12; *Proceedings of the First Annual Meeting*, 1927, 85; *The Field of the Motor Bus*, an address by A. J. Brousseau.

Duncan, C. S., *Motor Bus and Truck Operation*.

Highway Transport Committee, International Chamber of Commerce, *Highway Transportation*.

Motor Vehicle Conference Committee, *State Regulation of Motor Vehicle Common Carrier Business*, 1927; *State Restrictions on Motor Vehicle Sizes, Weights and Speeds*, 1927; *Special Taxation for Motor Vehicles*, 1927.

National Automobile Chamber of Commerce, *Bulletin*, October, 1926; *Facts and Figures of the Automobile Industry*, 1927; *61st Railway Now Substitutes Bus for Branch Line*.

National Association of Railroad and Utility Commissioners, *Bulletins*, 59, 1926; 61, 1926; 65, 1926; 71, 1926; 73, 1926; 12, 1927; 55, 1927.

Scanlon, D. A., *Outline of Subjects Discussed in the Bus Operation School*.

IV. NEWSPAPERS—

Newark (O.) *Advocate and American Tribune*, April 4, 1927.

New York *Times*, April 6, 1926; September 11, 1928.

Ohio State Journal, June 25, 1927.

V. LETTERS FROM—

California:

Motor Vehicle Division, July 21, 1927.

Railroad Commission, Questionnaire filled out and returned, February, 1926.

State Board of Equalization, July 26, 1927.

Galbreath, M. T., Assistant Manager, *Bus Transportation*, March 17, 1927.

Jackson, Walter, Rate Expert.

Keenon, R. W., Counsel for Consolidated Coach Corporation, December 17, 1927.

Maryland: Public Service Commission, October 10, 1927.

Meighan, John M., Secretary Bus Division, October 19, 1927, and January 14, 1928.

National Automobile Chamber of Commerce, October 25, 1927.

National Association of Railroad and Utility Commissioners, November 1, 1927.

New York: Tax Department, January 28, 1926; Public Service Commission, March 24, 1926; September 7, 1927.

Rhode Island: Public Utilities Commission, February 25, 1926.

Various State Commissions, Questionnaires kindly filled out for me.

INDEX

- Accounting System, commission may prescribe, 152; no satisfactory system in effect, 153; indispensable basis of intelligent rate fixing, 153.
- Adequacy of Service. See Service.
- Applicant, financial ability of, 97-8; selection between applicants, 103-7; character of, in determining applications, 106-7.
- Application for Certificate, filing, 73-4; notice of application, 74-5; hearing on, 76.
- Betts, Amos A., on difficulty of fixing motor carrier rates, 143.
- Bills, introduced into Congress, 4; also chapter 16.
- Bona fide operator on effective date, must have certificate, but receives it on affidavit, 70-2; with certificate granted, on legal level with other operators, 72; and certificate thus granted revocable as if granted on convenience and necessity proved, 168.
- Brousseau, A. J., on field of bus operation, 173, note; attitude toward Parker bill, 248.
- Buck* case, 217-18.
- Bus, developed from automobile and truck, 1.
- Bus Division of A. A. A., made survey of rates, 142; favors plan of Parker bill, 248.
- Bush* case, 218 ff.
- California, pioneer in regulation, 8 ff; filing fee, 14; volume and effectiveness of commission work, 32-35; exempting farm haulers unconstitutional, 36; leader in regulating security issues, 149-50.
- Centralization of control of highways and their use, 258-9; 261.
- Certificate of Public Convenience and Necessity. Origin, 52; in other public service enterprises, 52-3; why required of motor carriers, 53-4; extent and validity of use, 54-5; also 17, note 50; term of, 55-6; nature of, 56-8; who must obtain, who need not, 58-67; granted as matter of right to bona fide operator, 70; for service to be established, 72-8; deviation from normal certificate, 78-80; factors in granting, see Chapter 7.
- Commission, regulatory, selection of members, 20-1; qualifications, 21-2; tenure, 22-3; salary, 22; removal, 23; jurisdiction of, four phases, 23 ff; forms of work, 31; effectiveness of work, 32-35.
- Common Carriers, statutory efforts at defining, 39-41; objects of regulations, 40; exact statutory definition impossible, 41; who are, 49; standards for determining, 48-9.
- Competition, as factor actuating regulation, 7; as between motor carriers, 7; as between motor and rail carriers, 174-6; difficult to determine

- extent of, 176; indices of extent of, 176-80; areas of chief, 177; rail lines suffer severe, 177-8; of motor carriers with steam lines, 180-1; with electric lines, 180; distance limits of, 181-82; to check, steam lines begin motor service, 182-3; experience of electric lines with, 183-4; attitude of regulatory bodies toward motor carriers and rail carriers in, 185-98.
- Complaints, how handled, 32; subjects of, 32; of rail carrier against motor carrier, 173-4; grounds for court action, 205.
- Contract Carriers, Private, in Michigan, 62-3; Ohio, 63; California, 63-7.
- Clark v. Poor*, 231.
- Depreciation reserve and rate, 151-2.
- Drivers, importance of, 112-115; licensing, 18, 112-15; improvement in, 115; schools for training, 115-17; pay of, 114.
- Duke* case, 63.
- Duncan, C. S., report, 173, note; 174, 179, 180; 181.
- Enforcement, who may aid in, 201; reports, 201; inspection, 202-3; investigation, 203-5; injunction, 206-7; penalties, 207-8; review of commission action, 208-13.
- Existing carriers, reasons for protecting, 254-5; also Chapter 13.
- Farm Haulers, exemption of, 36-7.
- Federal Aid to highways, rights and obligations of state and Federal Government where involved, 233-6.
- Federal Regulation of Interstate Carriers, Chapter 16; constitutional basis for, 238; practical necessity for, 238-40; measures proposed, 240-6; suggested plan of, 248-9; witnesses offering testimony on Cummins Bill (S. 1734): Clyde H. Jones, Ivan Bowen, J. J. Murphy, John E. Benton, S. A. Markel, Charles Webster, H. E. Manghum, S. I. Lipp, W. B. Hiner, Clinton Robb, H. S. Shertz, T. D. Pratt, H. T. Bush, A. T. Marsh, B. B. Cain, E. W. Hebel, H. A. Taylor, W. H. Day, W. H. Chandler, J. H. Awtry, J. M. Lennon, J. E. Dunningham, T. H. MacDonald, 242-45.
- Fellow Workers riding to work in one another's cars, not common carriage, 46-7.
- Filing Fee, 14.
- Financial Effect of granting certificate, 95-7.
- Financial Ability of Applicant, 97.
- Flynn, Examiner Leo J., recommendations on Federal regulation in 1928, 247.
- Frost* case, 64-7.
- Futurity, as factor in granting certificates, 88-9.
- Hayes, Henry R., on effectiveness of commission work, 35.

- Hearings on Cummins Bill, 239 ff.
- Hearings, regional by I. C. C. in 1926, 247.
- Highways, cost of, 5; who pays, 6.
- Illegal operators, how dealt with, 102-3.
- Integration of state control over motor carriers, 262.
- Interstate carriers, magnitude of operation, 214-15; early state efforts at regulating, 216-17; inability of state to deny certificate for interstate operation, 218-20; can forbid interstate carrier to engage in intrastate operation, 222-6; what is interstate operation, 220-1; state can apply reasonable regulations to, 228-9; taxation of, 230-33; question of liability insurance, 226-8; summary of state regulation of, 236-7; proposed regulation of, Chapter 16.
- Irregular operation, usually not regulated, 68-9.
- Jackson, Walter, on rates, 141-2.
- Liability protection, need for, 118; municipal precedents, 118; forms of, 119; amount of, 120; basis for determining amount, 119; usual condition of certificate, 121; waiver of, its justification and dangers, 121-2; valid as a requirement, 122; grounds for recovery of damages, and injuries, 123-5; as applied to interstate carriers, 226-8.
- Lilienthal, D. E., and Rosenbaum, I. S., on nature of certificate, 57; on transfer of certificate, 154; on review, 211; on magnitude of interstate carriage, 215.
- Local government and regulation, 29-31; 38-42; 259-61.
- Magnitude of motor carrier industry, 2-3.
- Monopoly, as means of securing proper motor carrier service, 253.
- Moody, Dan, Attorney General, on applicability of railroad laws, 13.
- Morris v. Doby*, 234-5.
- Motor Truck Committee of N. A. C. C., investigates truck rates in New York region, 142.
- Motor Vehicle Conference Committee, recommendations on uniform maximum dimensions of motor carrier vehicles, 258.
- National Association of Railroad and Utility Commissioners, made no study of rates, 142.
- Organization of carriers, 3.
- Parker Bill for Federal regulation, attitude of A. J. Brosseau, representing N. A. C. C. toward, 248.
- Penalties. See Enforcement.
- Popular preference for motor service, 99.
- Principles of regulation. See Chapter 17.

- Priority in filing application, 104; in beginning service, 105; in investigating application, 106.
- Protection and preservation of highways as principle of regulation, 256-8.
- Public convenience and necessity, standards for determining existence of, 81-107.
- Public safety as principle of regulation, 255.
- Rail line, weight of practice is to protect against motor competition, 190 ff; and motor carrier, Chapter 13.
- Rates, of secondary importance to public, 134; authorization to fix rates, 134-6; increase and decrease of, 137-8; 140-1; joint, 140; rates charged in specific states, 1926, 142; insufficient bases for conclusions as to rates and rate policy, 143.
- Regulation, when begun, 5; motives for, 6 ff; establishing, 12 ff; experimenting in, 14 ff; valid, 16 ff.
- Regulatory statutes, a collection of, is A. E. R. A. *Bulletin* 120.
- Review of commission action. See Enforcement.
- Revocation, causes for, 163-9, 172; insufficient grounds for, 169-70; in particular states, 170-71; procedure in, 171-2.
- Safety, an objective in operation, 108-12; means of attaining, 109-18.
- School bus, exempted from regulation, 38; what is a, 38; number of, 38.
- Security issues, 149-51; sale of, 150.
- Service, a reason for regulation, 8; adequacy of, 86 ff; filing schedule of, 126; changing schedule, 127; existing carrier and additional service, 128, 130; relation of equipment to service, 128-9; specifications must be met, 131; unification of routes to secure through service, 131-33; primary interest of public in, 135.
- Speed limit, 109-10; on what should depend, *ibid*.
- Slater, J. E., urges rail lines to enter bus field, 197.
- Swayne, A. H., on relation between motor lines and rail lines, 196.
- Taxation, bases and amount, 144-5; significance of forms of, 145-6; variation of amount of among states, 146; purposes for which tax money may be spent, 147; character and fairness of tax imposed, 147-8.
- Transfer of Certificate, 154-62; Grounds for authorizing, 154-6; Procedure, 156-7; question of attached cash value, 157-61; in consolidation of operations, extent and results, 161-2.
- Transportation, absence of as factor in granting certificates, 85.
- Trumbrower, Henry R., on taxation of motor carriers, 146-7.
- Vale, E. M., 12, note .25.



